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CORRESPONDENCE

Liberals' 'right' to be wrong

Scanning the March/April *CPR,* I am struck by the liberals' weird notion of "rights." Farmworkers, they say, ("State-imposed farm labor contracts," by M. David Stirling) have a "right to be recognized at the bargaining table ...." — a "right," in other words, to demand that *other* people do something, *i.e.,* "recognize them." Boy Scouts, on the other hand, ("The Scouts Win Again," by Russell G. Shubin), have no "right" to think or behave as they want to, organizing their own activities. And judges ("Blacklisting the Boy Scouts," Mark S. Pulliam) can't claim a "right" even to belong to the Scouts.

Customers who stroll into MacDonald's ("Good Judge Sweet," by Joy Skilmer, *né* Lyn Nofziger) and volunteer — even pay out money — to eat the food offered there, have a "right" to sue when their own eating choices make their own bodies fat.

And finally, John Quigley ("Raising a Ruckus," by George Neumayr), evidently because he calls himself an "environmentalist," has a "right" to perch in a tree that does not belong to him, delay a large, productive business endeavor, certainly costing the owners considerable money, and do his best to destroy the good reputation of their company, which is doing nothing but using its own property to contribute to the overall economy.

I guess the rule is: it's your right to push people around, to abuse yourself and then demand money and property that aren't your own and that you have done nothing to create or earn, and to irritate anybody trying to make any sort of positive contribution to the community, *but* you have *no* right to think for yourself, to choose the organizations you will join, or to control anything you actually have built, bought, or earned yourself. I think I begin to see why these folks found it difficult to support liberating Iraq. It might lead to thoughts of liberating America — from them!

Phillip Jackson
Montebello

Berkeley *vs.* the Boy Scouts

Regarding your story "State Supreme Court to hear Scout case" [*Capitol Watch,* week of March 21 to 27, reporting that "California's Supreme Court will consider an anti-discrimination suit against the Berkeley City Council for its policy of charging the Sea Scouts, but no other nonprofits, for using city facilities."], as a supporter of Boy Scouts' independent rights, I say this is a good move, and the Scouts, it would seem, are certain to prevail!

Mark (Denny) Weinberg
Camarillo

McClintock for Governor?

I begin to think that if the recall is successful, our best replacement candidate is Senator Tom McClintock. How about some *Capital Watch* comment on the recall, and candidates?

Allen K. Ream
Woodside

Capital Watch, week of March 28 to April 3, carried a brief update on the then-just begun signature gathering. If the recall looks likely to make the ballot, CPR (and Capitol Watch) will explore the question of likely candidates — Republican and Democrat — who appear to have a realistic shot at replacing Davis.

— editor

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SACRAMENTO SPECTATOR

To hear the *Los Angeles Times* tell it, California Republicans and 21st Century Insurance conspired to circumvent state campaign finance laws when more than a million dollars from the California-based company passed through several county Republican parties to fund key legislative races last fall.

The California Republican Party maintains all laws were complied with and, despite Democrat hand wringing, even Democrat former Acting Secretary of State Tony Miller told the press the GOP maneuvers appeared legal. Without bogging down in campaign finance law minutiae, just know that more than a million dollars went from 21st into the state Party and county parties, which subsequently spent money in support of key GOP candidates such as Senator Jeff Denham and new Assembly Members Shirley Horton and Bonnie Garcia.

But the real hitch was that a loophole in campaign contribution reporting requirements allowed the state and local parties to wait till late January to reveal that the contributions had gone in and out of their coffers. A GOP operative familiar with the drill said, "The fact of the matter is, the Dems wrote the law with this loophole on purpose. We used it to ream them and they're not happy about it. They went crying to the press, and the media is outraged. Boo-friggin'-hoo. It's about time that Republicans saw that their leaders will be cunning and ruthless to win elections."

The Democrat hand wringing is patently hypocritical. Records indicate that John Burton shifted more than $1 million to the state Democrat Party after the election. By sheer coincidence, the California Democrat Party happened to spend about $1 million in support of Rusty Areias against Denham in the last two weeks of that campaign. Burton, as the Democrat Senate leader, is, of course, responsible for funding Democrat Senate candidates like Areias.

And Secretary of State Kevin Shelley, playing Louie from *Casablanca,* was shocked at the GOP "money laundering," demanding a Fair Political Practices Commission investigation. Just last fall, campaign contribution reports show Shelley actually did launder money, helping move it from former Assemblyman Dennis Cardoza's state campaign account, through Shelley's political account, and back out to Cardoza's congressional account. Direct funding from Cardoza's state account to his congressional account would not have been permitted. Mr. Shelley's glass house needs the windows cleaned.

What happened to the recall? The Recall Gray Davis effort has run head-long into America's preoccupation with war. Shock and awe has probably spared Gray any serious recall headaches.

However, even before that bunker-buster hit the Recall, the campaign was dealt a serious blow when signature-gathering firm Arno Consulting was suddenly unavailable to gather signatures on the street. It seems the Arnos were taken for a long walk in the woods and decided afterwards that Davis wasn't such a bad governor after all.

Finally, your *Spectator* notes that San Francisco Assemblyman Mark Leno, a member of the Legislature's growing "Gay Caucus," set a new precedent on the annual Legislative Women's Day when the Woman of the Year he selected from his district was a transgender person. Leno did not return calls asking if next year he would just go ahead and invite the Village People.

—*A. P. C.*

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Disabling America

The Americans With Disabilities Act: egalitarianism run amok

MARK S. PULLIAM

THE ROAD to hell, the saying goes, is paved with good intentions, and I have no doubt that the federal Americans With Disabilities Act (ADA), was enacted in 1990 with nothing but good intentions behind it. The ADA, however, is a quintessential example of what happens when well-intentioned lawmakers (led in this case by President George H.W. Bush) hand out open-ended and ill-defined "rights" so as to rectify a perceived history of unfairness or discrimination. Who wants to be opposed to helping the handicapped? The trouble is, complicated federal laws, and the administrative and judicial enforcement schemes that come with them, are like *tsunamis,* moving with irresistible force in only one direction, wiping out everything in their paths, and incapable of fine distinctions, even if necessary to avoid disasters.

In addition to giving "the disabled" (an amorphous category far broader than the conventional conception of persons confined to wheelchairs) the right to sue virtually every establishment, private or public, for discrimination, the ADA imposed what amounts to a national building code on the entire country, banning doorknobs in the workplace, requiring ramps in addition to (or instead of) stairs, elevator buttons to be at wheelchair height and marked in Braille, and a host of similar obligations, including the now ubiquitous and often unused parking spaces reserved for the handicapped. Even fitness clubs (and, my favorite, the parking lot at the base of the strenuous hike up Cowles Mountain in San Diego) are required to dedicate a prescribed number of spaces for handicapped users, even if there are none.

Every day, the overwhelming majority of (able-bodied) Americans are inconvenienced by these reserved parking spaces, and by lowered drinking fountains and pay phones, and other facilities mandated by the ADA. Worse, the ADA imposes substantial costs, and indirect burdens (such as the reduced number and size of non-handicapped spaces in parking lots), on society without any reasoned analysis of the benefits (if any) conferred, or the trade-offs required. Resources are not infinite, and money spent in one area is ineluctably taken away from another. As Philip K. Howard noted in his best-seller, *The Death of Common Sense,* less than two percent of the 43 million "disabled" Americans supposedly protected by the ADA are in wheelchairs, and most of those are confined to nursing homes. Yet, he points out, "[b]illions are being spent to make every nook and cranny of every facility in America wheelchair-accessible (for example, by tearing down and rebuilding showers), when children die of malnutrition and finish almost dead last in math." This makes about as much sense as requiring the buttons on drive-through ATM machines to be in Braille.

A FLOOD OF ADA litigation is in the federal courts, not just against employers and business establishments, but also programs provided by state and local governments, and even prisons. Despite occasional "victories" in the U.S. Supreme Court, resulting in common sense interpretations of the ADA in particular cases, the nation's high Court can do little more than stick its finger in the dike of absurd lower court rulings. (In defense of lower court judges, I must point out that the ADA, as written, frequently compels absurd results, so the blame must be shared by the legislators who enacted it.)

Here are some recent examples of ADA jurisprudence, which, I assure you, are not a parody:

The First Circuit Court of Appeals ruled in favor of a one-armed applicant for a paramedic position, whom an ambulance service in Massachusetts refused to hire

Mark S. Pulliam, California Political Review's *legal issues correspondent, is an attorney in private practice in San Diego.*

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THE FRONT LINE

CRA's 'big tent'

Californians believe firmly in the family (Proposition 22) and reasonable tax rates (don't mess with Prop. 13), oppose race preferences (California Civil Rights Initiative) and bilingual education (English for the Children). But the state is somehow dominated by a Party ideologically, and vehemently, opposed to each of these propositions. What gives?

The superficial answer is easy: Californians do not fight for these things. The tougher question is: why not? *CPR* often criticizes GOP leadership for a general flabbiness in standing for conservative policies the people support, criticism that, especially under Pete Wilson, was fully earned through years of diligently refined political mismanagement. The leadership too often forgets its job is to use the power voters entrust to it *to serve the peoples' interests,* concentrating instead on personal career goals.

But the flip side of that coin is that the *peoples'* job is to make clear to the leaders, and to the state as a whole, what they want. Democrat constituencies do this well, environmentalists, anti-gunners, welfare statists, pro-abort family and religion haters, union strongmen, trial lawyers, and all the multitudinous armies of folk feeding on the public ... uh, generosity, give full voice to their interests, never wincing or shying away despite their narrowness, rapaciousness, and sheer destructiveness.

But what of the rest of us? Once upon a time, there was in California an organization to be reckoned with called the California Republican Assembly. At its 1964 convention, with more than 3000 attending, CRA support made a crucial contribution to Barry Goldwater's presidential primary victory. CRA's early endorsement of Ronald Reagan for governor instantly transformed Reagan into a contender to be taken seriously. Even as recently as 1994, Ron Unz's surprise campaign kick-off with an endorsement at CRA's state convention significantly propelled his maverick effort to overthrow Wilson.

And now? CRA's recently-held, nearly invisible, 2003 *state* convention elected new officers, the *total* votes cast coming to something around 125 for the group's top leadership post. A bigger crowd than that turned out recently for a *monthly* meeting of a Republican Women's Federated group representing *part* of *one county.*

Even more revealing, the mood of the convention, and especially of the issues involved in the voting — projected by the eventually victorious faction — reminded some observers of the game of lifeboat, where the objective is to be last man alive. The convention hotel had the feel of a Wilsonian "Big Tent" — lots of room for big egos, but precious little enthusiasm for filling the place with *people* — *new* people who might prove frighteningly impatient with leaders not producing real results in state politics.

Meanwhile, in the political real world, we hear that good conservatives, like Assemblyman Tony Strickland of Ventura and the north state's Rick Keene, believe long-time Bill Thomas strongman, Kevin McCarthy, might make a good Assembly Republican leader. Clearly, lack of a firm conservative grass-roots guiding voice is showing itself.

We hope CRA's new leaders find the way to attract the thousands of Californians eager to work actively for conservative victory. Until they, or some new group(s), do so, this non-liberal state is likely to stay dominated by the far left.

CPR

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because she was unable to satisfy the lifting requirements of the job (the ability to lift up to 20 pounds with one hand and up to 70 pounds with two hands) — which were intended to ensure that a pair of paramedics could safely lift a stretcher with a patient weighing up to 300 pounds.

THE TRIAL court threw the one-armed applicant's case out of court based on the employer's evidence that she could not perform an essential function of the job — properly transporting patients. The Court of Appeal reversed, questioning whether the lifting requirement was essential to the job. As a result, the one-armed paramedic can proceed to trial with her ADA claim and perhaps win the right to provide inadequate emergency medical care to acutely ill patients. After all, what's more important, patient safety or equal opportunity for the disabled? One hopes the jurors will consider whether, if they suffered a heart attack, they would rather call a muscular, two-armed paramedic capable of administering CPR and lifting them into an ambulance, or a one-armed paramedic who couldn't pass the strength test.

A federal judge in Los Angeles recently ruled against AMC Entertainment, Inc., the giant movie theater chain, in an ADA case challenging the company's use of "stadium-style" seating in theaters throughout the country. "Stadium-style" seating, which is used in most theaters built since 1995, features steeply sloping rows of seats, on tiered levels above and below ground level, facing a giant screen, giving all patrons an unobstructed view without having to look past the head of the person in front of them. (The gently sloping seating used in earlier theaters often resulted in blocked sight lines.) Because of the steep slope, the upper and lower rows of seats are accessible only by stairs, and seating for wheelchair users is set aside on the ground level. While the reserved wheelchair seating provides convenient access and an unblocked view of the screen, the seating is not identical to the seating for customers able to climb the stairs. This, U.S. District Judge Florence-

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

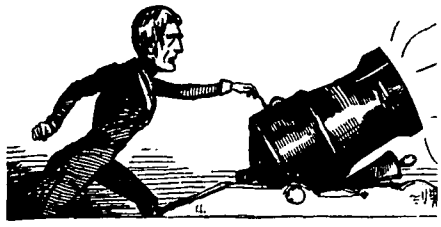
By SAM PAREDES

What the heck is "scientific dialectic materialism"? The term seems to imply dialogue (which is what Aristotle and Plato had in mind in talking about *dialectics).* But for the left, the operative word is "materialism," meaning pure power politics: winning by beating down opponents with superior force, leaving fairy tales about rational deliberation (the Founding Fathers' idea of government) to the sissies.

As Senator H.L. Richardson, ret., explains in his book *Confrontational Politics,* this is liberalism's mode of political action. The recipe is as simple as it is complex: take a hefty dose of situational ethics, add some deception and distortion, finish with a touch of "I'm a victim," and you're ready for a liberal political street fight.

In their campaign to end private possession of firearms, for instance, liberals only begin with anti-gun groups. They also use health care activists, animal rights extremists, state bureaucrats, and others, all pushing toward the same goal, moving one step at a time.

Already this year they've proposed legislative bans on: use of dogs for hunting fur-bearing mammals, dove hunting (usually hunted using dogs), and possession of large caliber, bolt-action rifles; they want to tax every single round of ammunition sold, require questionable safety gadgets for every new pistol sold, and, the *pièce de résistance,* registration of all rifles and shotguns.



The game plan is clear: surround the people with laws hemming them in a little more each year, slowly reducing their ground until, finally, nothing remains. When hunters, sportsmen, and gun owners fight back, offer carefully-crafted compromises, giving the impression gunners are actually getting something when, in reality, the noose is only being drawn a little tighter.

We win this game only when we refuse to compromise and shove the liberals back to where they began. Losing ground is never an option.

Let's watch this year's legislative battles; let's see if the libs behave true to form. CPR

Sam Paredes is executive director of Gun Owners of California.

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LEGISLATIVE FILE

Repealing 'Job Killers'

Senate Republicans want to roll back the worst of California's recently-passed job killer laws. Little wonder: 57 percent of business executives rank California's business climate the nation's "least favorable," compared to 36 percent who picked New York, 18 percent for Massachusetts, and 15 percent for New Jersey.

We've lost a quarter million manufacturing jobs since 2000 and recent studies show more people leaving California than arriving here, a trend reminiscent of the early 1990s' entrepreneurial drain.

A prime target is the state's increasingly disfunctional workers' compensation system. Early last year, the Legislature passed Assembly Bill 749 (Calderon) increasing workers' comp insurance rates by $3.5 billion — a 23 percent hike making what was already the nation's most expensive system even worse. Many businesses report costs jumping 100 percent or more. Another new law passed last session (AB 2816 — Shelley) forces employers to provide workmen's compensation coverage for temporary agency employees.

The Legislature rounded out its anti-employment onslaught with SB 975 (Alarcon), more costly prevailing wage mandates, and AB 2509 (Goldberg), a scheme whereby cities and localities can pass regional wage and labor ordinances.

But Republican Senators Chuck Poochigian and Dennis Hollingsworth want to repeal all these burdensome labor

regulations. They've introduced Senate Bill 1010, which would restore relevant labor law to where it was two years ago.

Another way California seems determined to destroy business is through taxes. Scrambling for funds last year to maintain record spending levels, the Legislature passed AB 2065, which suspended (for two years) the net operating loss deduction, often called the "loss carry forward deduction," heaping $1.2 billion in higher taxes on the state's most vulnerable businesses.

This deduction was created during the early '90s recession to provide a cushion for small companies struggling to weather the financial storm. Like most business tax relief, it aided in the creation and retention of hundreds of small businesses — the backbone of our economy. Suspending this deduction last year took down the safety net exactly when business needed it most.

AB 2065 also imposed new tax-withholding requirements on residential real estate transactions. Essentially a tax increase, these new requirements discourage investment in California. These disasters are addressed in a Hollingsworth/Poochigian co-authored measure, Senate Bill 1012, that would repeal both anti-business tax-increases.

The third salient in the state's perverse campaign to drive away its entire productive sector is an environment of ever-threatening, and seemingly endless, costly lawsuits. Last year the Legislature handed the trial lawyers a goodie-bag of new tools to make it easier to sue business. Dick Ackerman's Senate Bill 1013 would repeal trial-lawyer-sponsored measures that extended the statute of limitations on tort claims and muddled the arbitration process to favor anti-business plaintiffs. CPR

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Marie Cooper ruled, violated the ADA because AMC failed to "provide lines of sight comparable to those for members of the general public." If this ruling is upheld on appeal, AMC could be forced to abandon "stadium-style" seating, at a cost of millions of dollars, and deprive non-wheelchair bound movie viewers the benefit of unobstructed seats. Moviegoers in wheelchairs will not have a better seat, but every one else will have a worse seat. All in the name of "equality" and "fairness."

Disability rights activists are aggressively pursuing a litigation strategy to apply the ADA to all government functions, not just "programs, services, or activities." The significance of this strategy is enormous. For example, in a case involving the city of Sacramento, the Ninth Circuit has interpreted the ADA to require cities to install "curb cuts" and "curb ramps" for wheelchairs at every street corner on all existing public sidewalks, and to remove all benches, signposts, and other barriers that could prevent wheelchairs from maneuvering on sidewalks, an obligation that — if upheld — could bankrupt many municipalities and will divert resources away from public safety, public health, education, and other needs.

IN AN even more dubious ruling, the Ninth Circuit has held that parole decisions are subject to the ADA. Two prisoners serving sentences of 15 years to life for second degree murder sued the California Board of Prison Terms, alleging that they were being denied parole because of their admittedly long history of substance abuse and drug addiction. Both prisoners claimed to have undergone drug treatment while in prison, and now to be drug-free (as one would hope an incarcerated prisoner would be). Although they have been eligible for parole since 1993, they have been consistently denied parole (a discretionary decision). The prisoners allege that this is because of "an unwritten policy" by the Board of Prison Terms to deny parole to prisoners with substance abuse histories. They argue that this violates the ADA. Past drug addiction (as opposed to current drug use), you see, is considered to be a "disability" under the ADA. (The public is largely unaware that mental illnesses are treated just like physical maladies under the ADA.)

The Board of Prison Terms argued that the ADA does not apply to the substantive decision-making process of parole proceedings, and the district court agreed, dismissing the case. The Ninth Circuit reversed, declining to exempt the criminal justice system from the scope of the ADA, and suggesting that even *arrests* could be challenged. Accordingly, a jury (rather than the Board of Prison Terms) will decide if these two murderers should be paroled, hardly a comforting thought. The reality is, most convicts have a lot of time on their hands. Litigation is a prime jailhouse activity. The prisoners in this case represented themselves. Opening the Pandora's Box of ADA lawsuits by prisoners seeking parole (or challenging their arrest) on ADA grounds is a prescription for disaster. Does anyone seriously believe Congress had such a result in mind when it enacted the ADA?

My final example is a case now pending before the U.S. Supreme Court. It, too, is a crazy decision by the

Not on the French

When it comes to fighting Iraq

What a fine ally is Chirac.

He'll sit on a bench

With the rest of the French

'Til it's time to stab you in the back.

If you're thinking of fighting at all

It's not on the French you should call.

Though they say you're a friend

You can never depend

On them when it comes to a brawl.

French president Jacques Chirac

Should be awarded a plaque

By Saddam Hussein

For making it plain

He's against the attack on Iraq.

— by Joy Skilmer*

** The political verse of Joy Skilmer, né Lyn Nofziger, is available at both Barnes and Noble.com and Amazon.com and from MND Publishing, 573 Marina Rd., Deatsville, AL 36022. Keep up with Lyn's "musings" at: www.lynnofziger.com*

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Ninth Circuit, this one written by notorious scofflaw Justice Stephen Reinhardt. In 1991, a technician working Hughes Missile Systems in Tucson, Joel Hernandez, was forced to quit when he tested positive for cocaine use. After going through a substance abuse recovery program, Hernandez re-applied for his former job in 1994, but Hughes rejected him based on a company policy not to rehire employees terminated for misconduct. Hernandez sued Hughes under the ADA, claiming that the refusal to rehire him was motivated by an impermissible reason — his former drug usage — which is a protected disability. The Ninth Circuit agreed. Reinhardt's decision stated that "a policy that serves to bar the reemployment of a drug addict despite successful rehabilitation violates the ADA." Hughes contends that this ruling gives drug and alcohol abusers preferential treatment, since they cannot be barred from rehire, whereas employees terminated for other types of misconduct — stealing, fighting, and so forth — can be. Once again, the U.S. Supreme Court will have to decide whether the ADA compels this absurd result.

Good intentions do not necessarily result in good public policy, and this is certainly true with the ADA. Yet, despite the abusive lawsuits and the wacky judicial rulings, no one in Washington, D.C., seriously advocates repeal or even reform. Can it be that the unfounded appearance of compassion is more important to a politician than justice or common sense? Or that no one in Congress is willing to own up to the fact that the ADA was seriously flawed? Our Declaration of Independence proclaims that "all men are created equal," defined as having been endowed by our Creator with certain unalienable rights. But all men are not equally endowed with health, intelligence, and physical attributes. Only massive and continuous coercion by an overweening government can mask the inherent differences among men in ability, achievement, and performance. To the extent that the ADA aspires to eliminate these innate differences, it is both misguided and doomed to failure.

Regardless whether the ADA is abandoned as a failed social experiment — and I harbor no illusions about the chances of that happening — Congress should at least revise the statute to eliminate some of the absurd results: for example, clarifying that drug addiction is not protected, that parole decisions are not covered, that the law applies only to government programs and services, not all government functions (such as sidewalks), that employers can determine job qualifications, and that non-discriminatory treatment does not mean treating everyone exactly the same. Until the ADA is fixed, the courts will continue to be mired in pointless lawsuits, producing senseless decisions, slowly but surely disabling America.

THOSE IN POWER OVER US

When a Tort is *not* a Tort

When it is being visited on you by the Franchise Tax Board, or so the FTB's tax collector zealots seem to think.

M. DAVID STIRLING

The U.S. Supreme Court will soon address a serious question of abuse of government power, in *California Franchise Tax Board v. Hyatt.* In *Hyatt,* California's taxing agency asserts that its sovereign authority permits it to commit intentionally tortious acts in Nevada against a resident of that state — one Gilbert P. Hyatt, formerly of California — while investigating whether he paid sufficient California income taxes. (An "intentionally tortious act" is a civil, in contrast to criminal, injury, such as, for example, falsly and maliciously portraying someone as having engaged in illegal or immoral conduct, or deliberately revealing confidential information to third parties, thus destroying someone's business and social relationships.) The Nevada Supreme Court, upholding Hyatt's suit against the California FTB, ruled that Nevada had the sovereign responsibility to protect its residents from intentional torts committed by California

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tax agents in Nevada. The U.S. Supreme Court heard the case in February and is expected to issue a ruling in the late spring or early summer. A win by California will empower state taxing agents to go into another state and deliberately abuse its residents with impunity.

* * *

GILBERT P. HYATT is a world-class inventor, researcher, and patent licensor. Both professionally and personally, he is a very private person. With a gentle, soft-spoken manner, he mostly works alone, creating and developing his inventions. For several years he lived in a modest neighborhood of a middle-class southern California community, his valued privacy often dictating the terms of his personal life. But the 1990 licensing of patents on certain of his computer technology inventions changed Gil Hyatt's world. Almost overnight, his personal and business affairs became the focus of a flood of intrusive and unsolicited public and media attention. He decided it was time for a change. On September 26, 1991, he said goodbye to California and moved to Las Vegas, Nevada.

Hyatt's move to Nevada contained all the legal indicia of permanent residency, *e.g.*, an apartment, sale of the California home, opening banks accounts, voter registration, a Nevada driver's license, and joining a religious organization. After a period of searching, he purchased both a home and a facility to house his research lab. He placed the lab facility's title in the name of another party to keep its address confidential. In April 1992, Hyatt filed a "Part-Year" income tax return with the California FTB for the period January 1 through September 26, 1991.

Meanwhile, in Sacramento, the executive officer of the FTB was exhorting his staff to a more aggressive pursuit of tax collections. His message introducing the taxing agency's new "Strategic Plan" (January 1992) stated: "With severe fiscal problems, a highly diverse and rapidly growing population, unmet social needs and an uncertain economic future, our elected officials have turned to those of us who are responsible for administering the state's tax programs ... to ensure that tax dollars are promptly, effectively, and efficiently collected to keep vital state programs and services running. Clearly, this is not a new assignment, *but it has taken on an unprecedented level of urgency and attention* .... I am confident that the outstanding talent and team spirit we have at FTB will enable us to fulfill the expectations and responsibilities assigned to us." *(author's italics)*

There is little doubt that the FTB staff got the message. In June 1993 — some 21 months after Hyatt became a Nevada resident, he received notice of an FTB audit of his 1991 Return. Such notices state that a taxpayer undergoing audit should expect "courteous treatment by FTB employees, ... confidential treatment of any personal and financial information that you provide to us, (and) completion of the audit within a reasonable amount of time." Now, 10 years later, not only does the audit dispute continue, but the FTB's treatment of Gil Hyatt has become a matter of national concern.

Upon receipt of the audit notice, Hyatt, through his tax attorney, immediately conveyed to the FTB auditor his intention to cooperate fully. In exchange, he required the agency's assurance that it would comply with California privacy statutes and its own confidentiality regulations by honoring Hyatt's overriding need for privacy and treat all personal and business information he provided with utmost confidentiality. Due to the sensitive nature of his business, and past experience with industrial espionage and the theft of trade secrets, Hyatt's attorney made it clear to the FTB that Hyatt could not risk public disclosure of any of his confidential information. With the FTB's assurances received, Hyatt provided the FTB with the vast amount of information it sought.

The specific issue triggering the audit, according to the FTB, is whether Hyatt really did, as he claims, become a permanent resident of Nevada when he says he did. That issue is being argued in a separate tax case in Superior Court. The issue in the case before the U.S. Supreme Court, however, involves FTB actions as it pursued its "audit." After receiving Hyatt's answers, and over the course of the next three years, the FTB:

* directed multiple investigative inquiries concerning Hyatt, using official FTB stationery, to numerous Nevada state, local government, and utility district offices, and to three area newspapers, disclosing his secret Las Vegas research lab address (following 40 such unauthorized disclosures of Hyatt's lab address, some of his most sensitive trade secrets appeared in publications and in others' commercial products);

M. David Stirling is vice president of Pacific Legal Foundation, a public interest legal organization that submitted a friend-of-the-court brief supporting Hyatt's position in the U.S. Supreme Court. He previously served eight years as Chief Deputy Attorney General of California. He can be reached at mds@pacificlegal.org PLF website: www.pacificlegal.org

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* issued official, subpoena-like documents called "Demand[s] to Furnish Information," (citing FTB's *California authority* to issue subpoenas) to numerous Nevada business and professional entities and individual residents, demanding that they furnish the FTB information concerning Hyatt (in fact, the FTB has no authority to issue such demands in Nevada);

* beginning in March 1995, sent agents into Nevada on three separate forays where they — unannounced — confronted and questioned many of Hyatt's current and former neighbors, the employees of businesses and stores he patronized, and other Las Vegas residents — even his trash collector — concerning personal details of Hyatt's life (FTB personnel disclosed in deposition testimony that during an investigative visit to Hyatt's Las Vegas home, one agent opened and rummaged through Hyatt's curbside mailbox, and then did the same with his trash container);

* with information Hyatt provided about Japanese corporate licensees of his patents, including Hitachi and Matsushita, the FTB sent excerpts from the licensing agreements to those companies, disclosing not only that Hyatt was under investigation for tax evasion, but suggesting that Hyatt's disclosures to the FTB violated the agreements' confidentiality provisions.

In addition, the FTB "bombarded" individuals, businesses, trade groups, licensees, Nevada government officials, and others (numbering in the thousands) with some 90 pieces of correspondence containing personal and confidential information about Hyatt. As a result, Hyatt's patent licensing business was destroyed and his royalty income from new licensees dropped to zero.

Yet, the FTB's treatment of Gil Hyatt has an even more sinister side. FTB personnel revealed in depositions that the FTB's approach is to target high-income, former California residents, and to reward personnel who produce excessively-bloated estimates of the taxes, interest, and penalties the taxpayer could be charged with, while penalizing personnel whose cost-benefit analysis suggests pursuing the taxpayer would cost the agency more than it would recover.

Depositions further describe how, through a very simple technique, an audit can be made to show the strongest possible case against the audit target — namely, deliberately gathering and focusing exclusively on information favorable to the FTB's position, while completely ignoring documentary evidence and witness statements supportive of the taxpayer's position. Indeed, FTB personnel testified in deposition that early in the Hyatt audit, a key FTB employee made the statement, "I'm going to get that Jew bastard." Later, that employee admitted in deposition that not only did she disregard evidence favorable to Hyatt, but even destroyed key notes and bank records favorable to him. Another FTB employee opined in deposition that the FTB audit "created an entire fiction about" Gil Hyatt. A Nevada court commissioner even suggested that the FTB's "bury (ing)" of information favorable to Hyatt might constitute fraud.

Without question, the most troubling abuse in this sordid story is the way such trumped-up, predetermined audit results are used to leverage the taxpayer. This phase of the process has two steps. The first step is the FTB's report of the tax owing — in Hyatt's case, $5.5 million. On top of this sum, the FTB arbitrarily imposed a $9 million penalty for his alleged fraud in claiming Nevada residency. The second step in the process closely resembles extortion. Indeed, the FTB instructs its personnel how to use the fraud penalty as a "bargaining chip" to "persuade" the taxpayer to pay the FTB's assessed tax. In Hyatt's case, FTB personnel went even further, "suggesting" to Hyatt's tax representative that settling for the $5.5 million then would avoid public revelation of Hyatt's personal and financial information, a deliberate scheme exposed by deposition testimony acknowledging Hyatt's unique and special concern for privacy.

California's Franchise Tax Board is urging the Supreme Court to give high recognition to its tax-collection mission, and to discount the seriousness of intentional torts it commits against individuals while pursuing that mission. That attitude, combined with the FTB's current budget plan of hiring 123 additional audit and collection personnel, should cause concern to all who value individual and economic freedom. We should hope this concern is not lost on the Supreme Court.

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The 'myth' of a biased media

Big city journalists hold conservatives in contempt, wouldn't invite them to their homes, consider them yahoos — but, dear me, what's all this talk about bias?

GEORGE NEUMAYR

Los Angeles Times media critic David Shaw writes dismissively of "Ranters on the Right." What about ranters on the left? They don't appear to trouble him so much. In a March column, Shaw showcased the new book of Eric Alterman, a bonified ranter on the left who serves as a left-wing hatchet man for such publications as *The Nation.* Shaw said he lunched with the radical author and found that his book *What Liberal Media?* makes a "persuasive case that there really isn't a pervasive liberal bias in the media."

But apparently Alterman couldn't stay on message during his lunch with Shaw. He acknowledged, Shaw relates, that "most big-city journalists are liberal ... I don't have to my house for dinner anyone who's not pro-choice, pro-gun control ... pro-campaign finance reform." Alterman also confessed to Shaw that conservatives who believe "the mainstream media hold them and their way of life in contempt" are correct. "Dan Rather and Peter Jennings and Tom Brokaw want nothing to do with the people who listen to talk radio and drive pickup trucks," Alterman said. "In the high levels of the New York media, these people are regarded as yahoos." And Shaw and Alterman continue to scratch their heads over the "persistence and widespread acceptance" of the "myth" that the media is liberal? Alterman should read his own quotes.

Like Alterman, Shaw considers journalists far too disciplined and fastidious to allow ideological bias to creep into their work. The yahoos have no cause for concern. These people are professionals. Liberal media bias is certainly a popular "perception," writes Shaw. But it is not a reality. Conservatives, he says, just don't understand that "journalists are skeptical, confrontational, and iconoclastic, which means they challenge the establishment, while conservatives want to conserve it. So the better journalists do their job, the more likely conservatives are to see them as liberal." Shaw admits that this theory "may be every bit as self-serving as Alterman's." (Shaw dissents from Alterman's contention that a vast right-wing conspiracy exists in the media.) That's big of him. But the larger problem with his theory is that it ignores an obvious fact: much of the establishment has been under liberal management for decades. Conservatives don't want the liberal establishment conserved; they want it questioned, and Shaw's supposedly skeptical media almost never question it.

Why Shaw finds the perception of liberal media bias so maddeningly mysterious is itself a mystery. Surely he has taken a look at his own paper. Clear out the *Times'* stable of ranters on the left, Mr. Shaw, and that "perception" will diminish. A paper without a single conservative columnist invites it. A paper with a book review section that contains paeans to communists, socialists, and liberal icons invites it. A paper *un*skeptical and *non*confrontational toward the liberal culture it spreads in Southern California invites it. Ever since former publisher Otis Chandler tried to ape the *New York Times* in the 1970s, the *Los Angeles Times* has proudly projected an image of liberalism. Is it really astonishing that Americans have finally perceived it?

"I've not only had a couple of anti-gun control friends to my house. I've gone on vacation with one of them. Twice," says a defensive Shaw. Quite a boast from a liberal media critic. Can the *Times* keep him?

The late *San Francisco Chronicle* columnist Herb Caen billed San Francisco as "Baghdad by the Bay." Patriotic Americans reading the paper's steady stream of antiwar articles would agree. While the *Chronicle* has

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yet to be renamed *The Baghdad Daily,* its antiwar coverage did lead some observers to note its March decision to subscribe to the anti-American Arabic news network, *Al-Jazeera.*

Editor And Publisher reported in March that "the Hearst Corp.-owned newspaper became a subscriber to the 24-hour satellite network, which has been accused of being a mouthpiece for Al Qaeda, but is also seen as a leading source for breaking news in the Arab world." "We may have to hire a translator," *Chronicle* Managing Editor Robert Rosenthal said to *Editor And Publisher.* "We have to see if there are English subtitles." "It's an outside view of the world," he continued. "It is the view from the Arab world." Not to mention a view from the streets of San Francisco. *San Francisco Chronicle* media columnist Jon Carroll no doubt cheered the news. He has been trying to convince his liberal readers that reporters aren't lapdogs for America. He decried the increasing "paranoia of the left." Not to fear, he told his fellow liberals. The "American public has more access to more dissenting voices than it ever did during the Vietnam War or even the Gulf War," he wrote in a March column. Don't worry that "Fox News is rather openly a propaganda outlet with a clear and complete right-wing agenda," he said. We have our propaganda outlets too! He directed their attention to left-wing British newspapers "available online; check out *Guardian* at www.guardian.co.uk." "In my new position as spokesman for my ilk, I am on the e-mail list of every leftist group in the nation ... I am delighted with the work that, say, Truthout.org or WorkingForChange.com is doing, but a lot of the other sincerely organic and peace-loving spammers are not so wonderful. They give being a Commie pinko rat a bad name," he wrote. He is particularly concerned about the "yo-yo fringe." He loves left-wing "yo-yos," but life "is too weird already; let's keep our eyes on the ball, ilk."

In the last Gulf war, the media complained about a lack of access to the front lines. In this Gulf war, they complained about too much access to it. "With Media In Tow, Does Objectivity Go AWOL?" asked the *Los Angeles Times* in March. The *Times* suggested that "embedded" reporters are too sympathetic to the military protecting them.

Back in their cubicles, reporters can be leisurely antimilitary. But when they take fire next to American soldiers, they lose this precious objectivity, the *Times* suggested. Where, it wondered, was the "daily questioning of the top military officers directing the campaign"?

Times editors, one suspects, use the phrase "some critics say" when they want to make an assertion in a news article without simply saying "Our opinion at the *Times* is ..." Take a look at this paragraph: "Some critics say these policies raise questions about the balance and sensitivity of wartime media coverage: How independent are reports from journalists whose very safety depends on the soldiers they are covering? And what stories are missing from American television screens — such as the reaction of other countries to the conflict and antiwar perspectives — as military analysts describe the latest action?" How graceful of the American media to push for the policy of embedded reporters and then question it.

The *Times* report goes on: "Even before it began, the placement of reporters with troops was 'an experiment of unprecedented size and scope,' said Cinny Kennard, a former CBS correspondent who teaches journalism at USC. 'I just don't know if it's a good arrangement.' Although there are restrictions on what journalists can report — and when — Kennard is more concerned about the question of independence, suggesting that 'a bond develops when you're in a situation like that. You're talking about people who form relationships with people who keep you alive. It's an extraordinary Catch-22.'" The *Times* reported the horror that "hundreds of reporters placed with combat units continue to generate largely sympathetic stories ... "

In another context, of course, journalists would laud comparably dedicated reporters who placed themselves in the middle of a story, so as to see with their own eyes what those they are reporting on see, to experience the event as directly as possible the better to report it accurately and with an element of human understanding of profoundly moving experiences all but impossible to capture any other way. But that would be for other contexts, not for America at war. Then, "objective" means adhering to liberal bias against anything that supports, especially by military force, the American ideals of personal freedom, republican government, opposition to tyranny. The possibility that stories about American soldiers projecting American power in a faraway land could be both sympathetic *and* accurate is inconsistent with the bias, and so it worries the people at the *Los Angeles Times.* That, Mr. Alterman, is what is meant by the *liberal* media.

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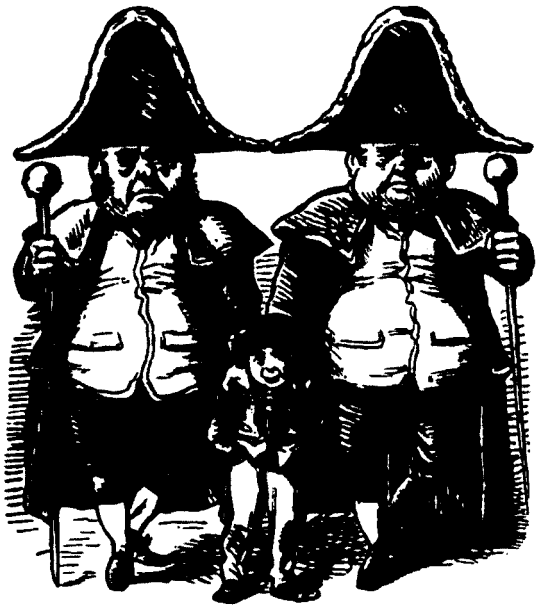

Liberals vs. Kids

They feel your pain, except when it's real, they're *all* compassion, unless taxes need raising, they'll do *anything* for kids, except what kids need.

BY FRANK DUCLOS

In the last legislative session, then-Assemblyman Dennis Hollingsworth and Assemblyman Jay LaSuer created Project KidSafe: a series of bipartisan bills, with authors and co-authors from both the Senate and Assembly, dealing with child safety issues. They were motivated, in part, by the murders of Danielle van Dam and Samantha Runnion that occurred in the two legislators' San Diego and Riverside County districts.

Tough-on-crime measures are always bitter pills for the Democrats who control the committees in both of California's legislative houses — the left voting to get tough on crime *only* when subjected to the glare of public

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scrutiny. These heart-wrenching crimes in 2001 and 2002 brought such a glare, driving passage of two of the five KidSafe measures introduced last session. GOP Assemblyman George Runner's AB 415 (2002) resulted in the creation of California's Amber Alert, reluctantly implemented by Governor Gray Davis after the murder of Samantha Runnion.

Hollingsworth's AB 1858 (2002), the Safe Teams Act, authorized local police agencies to emulate Santa Clara County's highly successful efforts to locate and track Megan's Law registrants. These most violent sexual predators are required to register with local authorities upon release from prison. Davis signed Hollingsworth's bill into law, but only after liberals in the Legislature had stripped out necessary funding. Within days of the bill becoming law (to little real effect, without funding), *Associated Press* released an exposé revealing that some 33,000 Megan's Law registrants had dropped from sight, at least as far as state tracking is concerned. Most are probably roaming California's streets unaccounted for.

A MORE AMBITIOUS KIDSAFE

Hollingsworth, elected to the Senate in 2002, and LaSuer, still serving in the state Assembly, have returned this year with a more ambitious Project Kidsafe in the current legislative session. Twelve new proposed laws have been introduced into both houses, again by a coalition of Senate and Assembly authors and co-authors.

This year's first KidSafe bill was Hollingsworth's SB 52, which would appropriate the $15 million necessary to fund fully the statewide "Safe Teams" created last year. At the first Senate Public Safety Committee hearing for KidSafe bills April 1, Hollingsworth, noting that the state spends several million dollars on poetry readings in California schools, argued that tracking known violent sex offenders should perhaps be considered for funding even before poetry reading. Evidently taking umbrage at this suggestion, Democrat Senator Gloria Romero remarked that poetry readings were of the *highest* priority for her. Given a policy environment reflecting such priorities, Hollingsworth's bill for funding appears doomed.

Associated Press **released an exposé revealing that some 33,000 Megan's Law registrants had dropped from sight, at least as far as state tracking is concerned. Most are probably roaming California's streets unaccounted for.**

NO VOTES FOR THE CHILDREN

Actually, what is happening, as Senate Public Safety Committee Democrats have made clear, is that the children's safety laws will go nowhere unless some *quid pro quo* emerges in the form of help for Democrat efforts to solve their budget crisis with tax increases. In addition, with liberal fanatic Senator John Vasconcellos holding forth in one of the key committee spots, chances for passage are dim in any case for this or the other Project KidSafe measures, which include provisions to crack down on purveyors of child pornography and toughen laws for murderers of children less than 14 years old. Eight of the nine bills heard in the Senate Public Safety committee were left on "reconsideration" for want of Democrat votes.

Up against a trifecta of ideological revulsion at the thought of curtailing criminal activity, cynical willingness to withhold child protection unless Republicans betray the state's working people by helping Democrats raise their taxes, and poetry reading — most of Project KidSafe's measures appear destined, this year anyway, for committee oblivion.

Frank Duclos is a writer living in Northern California.

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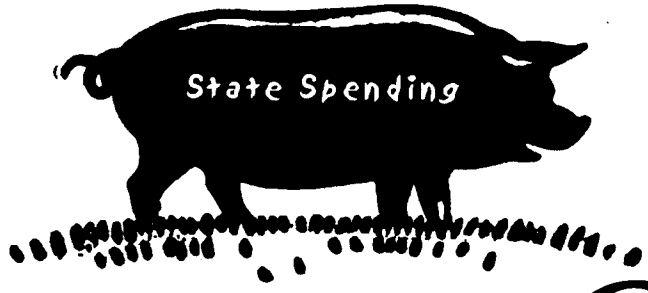

Contrived Budget Crisis

A NEW GOLDEN RULE FOR SACRAMENTO SPENDING LOBBIES AND LIBERAL LAWMAKERS:

Greed Is Good

by RAY HAYNES

DID YOU READ something startling recently? About a quarter of the state budget deficit disappeared — *poof!* — with a stroke of Gray Davis's pen. The "mind-boggling" deficit went from $34.6 billion to $26.4 billion in an instant. But the startling part was not so much the disappearance as it was that the trick was performed while actually cutting almost *nothing* at all.

How this came about well illustrates the degree to which the current budget "crisis" is phoney — that it was predicted in precise detail and at regular intervals, beginning many years ago, mostly by Republicans but also, believe it or not, now and then by leading Democrats, including Governor Gray Davis, Assembly Speaker Bob Hertzberg, and Senate Majority Leader John Burton, and that the solution to it has nothing whatever to do with spending "cuts," large or small, under any rational definition of "cut" (as in "reduction"). This is a manufactured "crisis" that requires little more than a slight curtailing of Democrats' ideological frenzy for growing state power in all directions at all times.

What happened to lop $8.2 billion off the deficit was just this: Democrats, including the governor, decided to increase this year's education spending plan slightly less, and slightly more slowly, than they had voted to do several months ago. $1.1 billion of their increased spending, for instance, was "cut" by delaying its release to schools for one month. That made it part of next year's budget. This "reduction" was magnified many times, however, because California's Proposition 98 incorporates an upward ratcheting effect governing all future education spending whenever present spending increases even a small amount. The "cut"-plus-delay gambit therefore triggers an equal *downward* ratchet in *expected* spending hikes for the next several years. Following all this? Planned new spending for this year, and next year, and the year after that was all added to the "deficit" because we expected to spend it even though we knew the funds wouldn't be there when spending time came. Now the new spending will be less than expected, and so — *voila!* — the deficit shrinks massively.

This is complex, but mainly because it is all so unreal. Democrats have built into state budgeting so many institutional prejudices in favor of aggrandizing their power and diminishing the peoples' freedom that one quarter of a nearly $35 billion deficit can be dematerialized by a tiny, essentially meaningless reconfiguration of the numbers as

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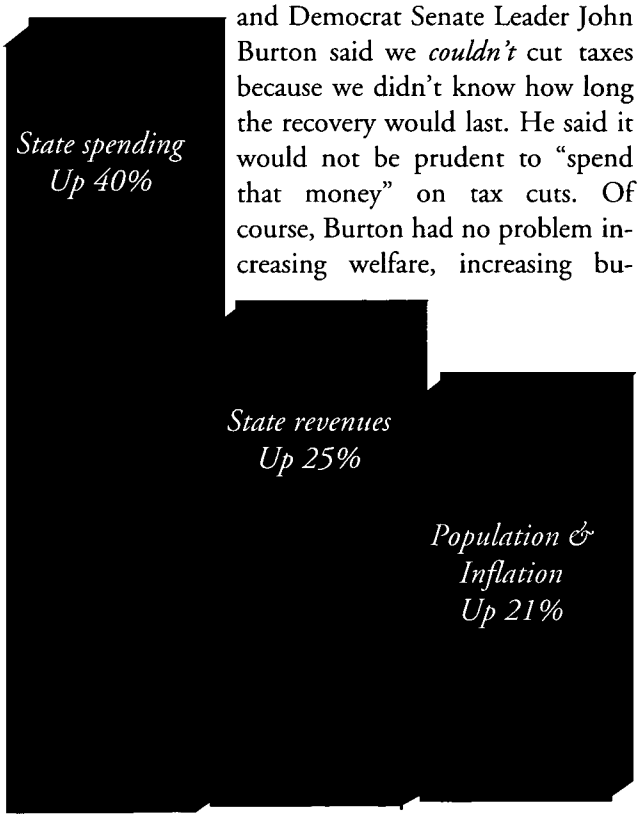
they relate to the prejudices. Next, of course, comes the wailing and teeth gnashing over "draconian" cuts and all the other usual hypocritical hyperbole.

My colleague, Senator Tom McClintock, sums up the history behind the current deficit with three numbers: 21, 25, 40 — during Davis's first four years in office (four years of Democrat domination of both legislative and executive branches), California saw a combined rate of population and inflation growth of 21 percent, state revenue growth of 25 percent, and state spending growth of 40 percent. Now Democrats want the astronomically-inflated spending to go on, and continue to increase, but the funds aren't there to permit it. That's the deficit in one lesson.

Republicans were right

As I mentioned earlier, this deficit came as no real surprise to anyone in Sacramento. The May 11, 2000, *Los Angeles Times* quoted Democrat Assembly Speaker Bob Hertzberg saying "a great deal of the money [financing steeply-rising spending] is coming from capital gains and we may never see it again." A few days later, on May 15, the governor said "It's very important to recognize that 1999 was a special year. It's not likely to reoccur soon." And Democrats had sounded this theme a year earlier, in 1999, when Davis refused to cut taxes and Democrat Senate Leader John Burton said we *couldn't* cut taxes because we didn't know how long the recovery would last. He said it would not be prudent to "spend that money" on tax cuts. Of course, Burton had no problem increasing welfare, increasing bureaucracy, and building in an extra $4 billion in permanent spending increases. *Sacramento Bee* columnist Dan Walters, writing at the time, noted the one-sidedness of the Democrats' concern: "Davis's self-proclaimed 'fiscally prudent' approach notwithstanding, the new budget still boosts general fund spending by more than 10 percent over the current fiscal year ...."



The Davis Years

In Democrat minds, 'prudent' means: spend the surplus; 'imprudence' is returning it to taxpayers.

In Democrat minds, "prudent" use of a surplus means: spend it; "imprudence" is returning it to taxpayers. In a column that appeared in June 1999, I wrote that "these apologists for an over-bloated bureaucracy contend taxpayers don't need the money, government does. When government takes the money from the taxpayer, wastes it on some new, feel-good, do-nothing program, *that* they call investing in our future. When money is returned to taxpayers, the Legislature is irresponsible, 'acting like drunken sailors,' according to Senator Burton."

So the broad outlines of today's "crisis" were recognized, in both Parties, from the start, and both Parties knew what they wanted to do about it, in conformity with their governing philosophies: Republicans, believing the money belongs to taxpayers who created the wealth it represents, wanted to give it back, predicting that the state, if it kept the money, would behave irresponsibly, creating a fiscal crisis. Democrats, liking state power, voted to use the surplus to grow government. They mostly ignored the possiblity of fiscal crisis — except when someone suggested tax cuts — usually by changing the subject to a discussion of Republicans as enemies of the poor and the needy, friends only of the rich, captives of primitive thinking, and so on.

Mr. William E. Saracino, in his companion article nearby, considers the notion that Democrats are friends of ordinary people, looking at whether it is supported or refuted by the policies they enact and their impact on working men and women in California. Here, I address the Democrat argument that Republicans were manufacturing dire scenarios out of nothing in order, they charge, to cover the selfish designs of the greedy rich that were supposed to be our

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only real concern. As the record shows, Republicans predicted and documented the developing fiscal meltdown at every step from 1999 onward. We told the truth about what was coming. Why point it out now? For two reasons: First, because an accurate understanding of how we arrived at the mess we're in is step one in cleaning it up. Second, it's the only way to avoid repeating these mistakes in the future.

OVER THE past four years, I have written often on this subject, and so will use my own past articles to chart the state's course from massive surplus to even more massive deficit. This brief history will also, along the way, show what Republicans were saying as we moved down this road. And although I use my articles, I wasn't alone. All Republicans were saying these things during budget negotiations in these Davis years. (The full articles referenced below can be read in full on the web at http://republican.assembly.ca.gov — click on "member directory," then "Assemblymember Ray Haynes," then "Issues"). All the articles quoted below were faxed or e-mailed to newspapers throughout the state, many were published in the *Orange County Register,* and all appeared in some California newspaper. All, in short, were publicly available.

I start in 1999, with the negotiations for the 1999-2000 budget. In "Big Government Wins Again" (published June 2, 1999), I said: "The Democrats clearly understood that economic recoveries did not last forever. They used it as an excuse to prevent tax cuts. I advocated reducing taxes another $4 billion. They said no."

The next year, during the budget negotiations for the 2000-01 budget, I wrote two articles, "Pigs at the Trough," (*CPR,* May/June 2000) and "What Goes Up Must Come Down," published in newspapers on May 19, 2000. First, "Pigs at the Trough":

> Why is our state heading for disaster? Because more is involved in creating government programs than just meeting a "need" or solving a "problem." Government programs suffer from an inherent conflict of interest: their existence is justified by the "problems" they are created to "solve" ... All this is inherently destabilizing: economically, because it tends to destroy productive peoples' incentive to produce by depriving them of the rewards they have worked to win; politically, because it undermines a premise of our free society: that, as a servant of the people, government should be strictly limited to a small number of clearly defined purposes; and morally because it is unjust to productive people. It breeds dependence among those it ostensibly exists to help. It breeds a bureaucratic culture of dishonesty and greed, as each arm of the state octopus strains for more funding and power, even as each grows more distant from and unconcerned with the mission it was created to serve.

How this perverse dynamic plays out in bloated budget numbers and crippling regulation was discussed in "What Goes Up Must Come Down":

> Our current budget has ballooned to more than $98 billion [general and special funds]. *That is a 20 percent increase in government in one year.* Yes, nearly $2 billion will be coming back to taxpayers in the form of rebates, but those are not tax cuts .... With the draconian legislation being passed this year in the form of onerous regulations and increased costs (like increasing worker's compensation benefits which will cost businesses $2.6 billion), our economic growth cannot help but slow down (and in some cases, come to a screeching halt). *(Emphasis added)*

The article then predicted the "crisis":

> Where will we be in a year or two, when revenues begin to fall off because of government's regulations on business, and the expenditures have continued to increase? We'll be right back where we were in 1992 when California implemented the largest tax increase in our history, only this time, it will have to be even bigger because our general fund expenditures at that time were only $41 billion. This kills jobs, drives up unemployment, forces businesses to leave the state, and causes extreme hardship on family budgets.

A little later in the budget discussions, I pointed out that "Since 1992, when I entered the Legislature, state government has nearly doubled. During that period, taxpayers have received only $3 billion in tax relief."

So, Republicans warned repeatedly of the economic damage to come from the tax, spend, and regulatory environment Democrats were creating in California. Democrats, unperturbed, said Republicans were "mean," "hard-hearted," and "partisan." Oops.

In 2000, the recession started, as California began facing the ravages of an electrical shortage and all the job-killing legislation began to take effect. The federal Justice Department's pursuit of Microsoft also helped, drying up the capital flow that fueled Silicon Valley (and the great capital gains tax revenue state government had been enjoying).

In May of 2001, looking forward to an 00-01 budget disaster if California did not restore spending sanity, I

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wrote (in "A Budget Out of Control," May 11) that while "It took the state of California 132 years to grow from a zero dollars general fund to a $22 billion general fund," it "only took Governor Davis three years to expand general fund spending by $25 billion." I tried to tie it all together in "The Perfect Budget Storm" (*CPR*, May/June 2001):

> For years ... California was not seriously damaged because Republican governors blunted the impact of bad Democrat ideas. Then, in 1998, that 16-year Republican prophylactic against liberal policy diseases broke down. The result? The perfect budget storm .... The bad policy decisions can easily be listed: (a) regulations that seek to avoid every imagined slight to the environment that might result from human activity, (b) a budget-writing ideology that assumes it is more important to grow government than to serve people, and (c) government policies that feed liberal special interests tons of money that would otherwise go to roads, jobs, or cops, or remain in the hands of those who created it in the first place. Which brings us to this year's budget morass .... No one plans to curtail spending on things like the fast-increasing "Healthy Families" healthcare scheme or the governor's ill-conceived expanded middle school program. The budget storm clouds are billowing blacker, with thunder rolling, lightning flaring, and California's "Andrea Gail" sailing straight for the eye.

In July 2001, (in "The Budget that Ate California") I traced recent budgeting history: from 98-99 (Wilson) general fund spending of $57 billion on revenues of $58 billion, to 99-00 (Davis) spending of $66.5 billion on revenues of $71.9 billion, to 00-01 spending of $80.2 billion on revenues of $78 billion (a $2 billion deficit), and, finally, to 01-02 spending of $79.7 billion on $74.8 billion estimated revenue — nearly *$5 billion* in deficit.

> From a $5 billion surplus [I wrote] to a $5 billion deficit in just two years. That is not irresponsible budgeting, that is reckless budgeting. It becomes more reckless when the trends are examined .... This budget predicts a full $4 billion loss in revenue, the largest fall in revenue in our history, and yet the budget spends only $600 million less than last year. If current revenue and spending patterns continue, California's budget could be as much as $6 to $10 billion in deficit next year .... A $6 billion surplus got the budget through the hard times, a $2 billion deficit last year and a $4 billion deficit this year. That cushion no longer exists. Record surpluses in the fiscal years from 1995 to 2000 have simply disappeared in the last two years, lost in a flurry of spending unrivaled in our state's history.

As it turned out, the 01-02 operating deficit was $11 billion. (The Legislative Analysts Office had projected a $4 billion operating deficit while Davis's Department of Finance had projected a *balanced* budget.)

The one constant in Democrat budgeting is their never retreat, never go back attitude toward spending, taxes, and regulation — through surplus or deficit, good economy or bad, whether revenues come in or do not. Last year, with the Legislative Analyst projecting 01-02 deficits of $8-10 billion and 02-03 deficits of $10-12 billion, Democrats, proposing no real scaling back, instead went into blame mode: It is the terrorist's fault, 9/11 slowed the economy. It is George Bush's fault; his tax cut reduced our revenue. It is the energy companies' fault; they gouged us. It never occurs to them that their overspending might have something to do with the problem. Actually, they did recognize a problem last year: an election was coming. They had to get through it. What did they do? In "With Bubble Gum and Bailing Wire" (May 31, 2002), I wrote that:

> ... the budget is held together with just enough bubble gum and bailing wire to get the state through November, and then it falls apart. It is a great *political* solution for a governor increasingly worried about re-election. It is a bad deal, however, for anyone who has to make real policy decisions following the election. It is also a budget with a not-so-secret balloon payment due in December. *(Emphasis added)*

In September (in "Peace For Our Time?"), I reported updated numbers:

> The Legislative Analyst Office projects a budget deficit of $8 billion next year. The controller says that projection is already $3 billion off, leaving the state with at least an $11 billion problem right now. Last year, these same entities projected a $4 billion problem, which turned out to be $24 billion.

By December, the election safely behind them, the balloon payment came due. The Democrat's response? Raise taxes. Senate GOP Leader Jim Brulte responded best when asked why Republicans were so resistant to tax hikes: "I have no intention of allowing the people who have driven us to the brink of bankruptcy to pass their problems onto the backs of the taxpayers of the state of California." Indeed.

Since this "crisis" has been a transparent Democrat contrivance from the start, designed to serve ideological frenzy, not California economic or governing reality, it is not surprising that Senate Republicans have been able to come up with a sensible, workable plan to eliminate the deficit without raising taxes and even with-

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Time for a budget action plan

Bill Simon

Budgets equal to state spending of the late '90s, adjusted for inflation and population growth, will resolve most of the state's fiscal crisis. An effective cap on government growth will guard against future out-of-control spending. It's just common sense, but powerful interests oppose its enactment.

I guess its tough to expect responsible and timely action from a group that takes days of intense negotiations to decide to approve a resolution supporting our troops, but the monumental size of the state's budget crisis demands immediate action by the Legislature and the governor. While a few legislators have put forward some solid ideas to staunch the flow of red ink, by and large the governor and legislative majority have made only token cuts. This delay is simply inexcusable because the size of the problem has been universally acknowledged for many months now.

Why is action so critical now when the new fiscal year doesn't even start until July 1? Because every day of inaction makes the budgetary hole deeper. By some estimates, this hole, without action, will reach an astounding $35 billion. At the present rate, we run a $21.4 million deficit every single day. That's $150 million a week and $650 million a month. We must stop the bleeding before we can cure the patient. Furthermore, as the state controller said recently, California doesn't even have enough cash to make it to the end of the current fiscal year. So strong steps must be taken now, not in three or four months.

However, as important as immediate action is, it is just as important to recognize the dramatically soft condition of our economy. Tax increases, as proposed by Governor Davis, risk depressing economic activity further. That is exactly what happened when tax increases were used to address the last huge deficit in 1992. And some cuts risk doing more harm than good. Cuts to local government risk police and fire services. Cuts in community colleges risk our citizens' chances of obtaining job skills necessary for employment. We need quick but thoughtful action, and a solution ensuring that uncontrolled spending will not lead to more deficits in the future.

Contrived Budget Crisis

Our state faces $35 billion potential debt because of too much spending. In the two-year period 1998 to 2000, general fund revenue surged 33 percent from taxes on capital gains and stock option income. This was obviously an anomaly, but legislative Democrats and the governor foolishly and unnecessarily spent most of the money — 1998-99 general fund spending was $57.8 billion; in 2000-01, it

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reached $78.1 billion, a 35 percent increase, while population had increased 3.6 percent and inflation 7.6 percent, a combined change just over 11 percent. The stock market peaked in March 2000 and our revenue and spending peaked in 2000-01. The next two years, the Legislature and governor used every possible accounting trick to try to cover their spending until after the November election.

Then, last January, Governor Davis proposed a $5.5 billion immediate reduction in this year's deficit — not enough to balance it, but at least a start. Unfortunately, one major element of his proposal simply passed the buck by passing the cuts on to local governments, threatening local police and fire services. The Legislature rejected this proposal and the governor has shown no leadership in seeking a consensus on any other plan. The Legislature also rejected a majority of the governor's cuts. Recently lawmakers passed two budget "reductions" totaling $3.3 billion — based more on accounting gimmicks than cuts.

So it's now past time for serious, responsible action. We must reject economy-crippling tax increases, live within our means, encourage new jobs creation, and prevent future spending problems. Here, step-by-step, is a program to do that:

- First, reduce state spending for the last quarter of this fiscal year as much as possible. Many legislators believe an additional $2.4 billion in cuts can and should be enacted. There's also word the governor will propose additional action soon. Hope springs eternal.

- Second, conservatively assess how much revenue the state can expect in the next two years. Fortunately, the nonpartisan legislative analyst has recently made just such an estimate, projecting revenues of $73.0 billion in fiscal 2002-03, $70.6 billion in fiscal 2003-04, and $73.3 billion in fiscal 2004-05.

- Third, adopt a balanced 2003-04 budget — one that spends less than that projected $70.6 billion in revenue.

- Fourth, deal with accumulated debt the state has racked up from the 2001-02 and 2002-03 budgets — $5 billion, if the reductions described in my first point are made.

- Fifth, after accounting for the accumulated debt, use 2003-04 and 2004-05 revenue to provide necessary services.

These steps would leave $69.5 billion each year to cover our annual education, health and welfare, and criminal justice needs. Is it possible for the state of California to provide these necessary services for $69.5 billion per year — not all we would like to do perhaps, but at least all we *must* do? I think it is. It's a level of spending approximately 10 percent less than the state will spend in 2002-03. More importantly, it represents the same amount of money spent on state services in fiscal 1996-97, after adjusting for increases in inflation and the state's population.

In other words, if we can survive on the amount of money government spent just seven years ago, including adjustments for inflation and population, we can take a giant step towards crawling out of this crisis. Is it possible to cut the size of state government to the level that existed seven years ago? I think it is. According to the legislative analyst, the cuts, shifts to alternative funding sources, and increased non-tax revenues proposed by the governor total $15.3 billion for fiscal 2003-04. In addition, the analyst lists another $2.4 billion possible cuts in fiscal 2003-04. Taxpayer groups have outlined $13 billion in potential cuts, some duplicating the governor's or the analyst's proposals. I do not want to make this sound easy. Holding the general fund to $69.5 billion is strong medicine, but it must be done.

Two additional steps complete this plan:

- Sixth, cap state spending firmly. California had such a limitation several years ago, but amendments to it, and material changes in state government's structure, have rendered it ineffectual. Other states have working limits on government growth. To protect our future, California should too.

- Seventh, restore California's once healthy business climate. Encouraging job creation is the best medicine for a struggling economy (and the best way to restore state revenues). Over the last four years, the Legislature and governor have passed dozens of bills imposing new regulations, increasing taxes, and subjecting employers to a multitude of lawsuits, with predictable results: employers, and jobs, have fled the state. These job killing laws must be rolled back, replaced by job creating law.

Three major obstacles stand in the way of this plan

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Business's Stake in the Budget Battle

William E. Saracino

California's business community faces a furious assault, ill-prepared to defend itself, against ever-rising taxes and fees, strangling regulation, endless law suits, and direct threats of criminal prosecutions for the crimes of creating jobs and adding to our prosperity. It could be time to begin taking politics seriously.

Contrived Budget Crisis

The California Chamber of Commerce just released a new list of "bad for business" and "job killer" bills introduced in this still relatively young legislative session. Among the "highlights":

• *tax and fee increases* — SB1X 3 and SB 17 (Escutia; D-Montebello) to ease reassessments and increase business property taxes; AB 1690 (Leno, D-San Francisco) to permit local governments to impose an income tax with only simple majority voter approval, and SB 981 (Diaz, D-San Jose, and Soto, D-Los Angeles) to raise oil fees, which will increase gasoline prices; also

• *more burdensome, costly regulation* — SB 2 (Burton, D-San Francisco) to require employers either to provide health insurance for every employee in California and their dependents or pay a health care coverage tax into a state fund; SB 921 (Kuehl, D-Santa Monica) to create a new taxpayer-funded state bureaucracy establishing a single-payer healthcare system in California; SB 57 (Burton, D-San Francisco) to mandate yearly increases in the state minimum wage (the Chamber thinks this will cost employers $304 million annually); AB 572 (Yee, D-San Francisco) creating new incentives to sue employers by significantly expanding the bases for workplace retaliation claims and establishing new personal liability, new crimes, million dollar fines, and jail time for California employers; AB 623 (Lieber, D-Mountain View) moving Proposition 65 provisions into the Penal Code, criminalizing violations — had enough?

There's plenty more. The Chamber lists more than 60 (!) of these bills. Boy, it's sure fortunate business made all those campaign donations to Democrats. Otherwise, real trouble might be brewing!

As the Chamber's list indicates, at least some people in the business community know they are up against it in Sacramento. But this knowledge rarely issues in any concrete action beyond lobbying the Capitol — as if office holders who owe their positions, their whole careers, to the support of their Party and the powerful constituencies whose donations and political support keep that Party strong, as if such office holders are going to oppose their Party's overall ideological direction because a lobbyist comes along and asks them to. Democrats' primary constituencies include trial lawyers, labor unions, and a gaggle of

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pro-government regulation zealots, all of whose agendas not only diametrically oppose the interests of business and a free economy, but specifically target business either as the cash cows whose milk keeps these constituencies going, as the villain in the morality tales that underpin their ideological fantasies, or both. Against this, business marshals its lists of "job killer" bills, its lobbyists, and its *pro-Democrat* political donations, in an effort to buy relief. After years of such political activity, comes this list of 60 bills, on top of recent workers comp, forced agricultural owner-union arbitration, and other sharp sticks in business's eyes. As Dr. Venkman said in *Ghostbusters:* OK, the usual stuff's not workin'.

It turns out that *every one* of the Chamber's 60 bad bills have Democrat authors.

WHAT, THEN, is business's stake in the budget battle? First, of course, there are the effects for the state's overall business climate of the particular spending, taxation, and regulatory proposals put forward directly or indirectly related to the business of enacting a California spending plan for 2003-04. But beyond the individual bills, there is the larger picture involving the overall political contest between the two dominant, competing ideas of government's proper role, represented, as a practical matter, by the two major political parties.

It is at this level that business seems strangely disinterested in protecting its own interests. Business appears to reason that its sole proper concern is attending to its own *business* — the production, marketing, distribution, research, financial management, and other activities necessary to keep going — and that, therefore, political activity is little more than a distraction to be disposed of as quickly and cheaply as possible, that the concerns of politicians are too petty to be allowed to interfere with the serious business of doing business. In short, business ignores the overall contest between the parties, engaging only in ritualistic attempts to buy off this or that politician through campaign donations given without regard to the recipient's position on business issues, only his apparent power to effect, one way or the other, enactment of business-impacting policy. Following this "on the cheap" gameplan, business gets its clocks cleaned regularly by Sacramento's big boys for whom politics *is* deadly serious.

The first step toward seriously competing in this game is to adopt an equally serious understanding of the stakes, the players, the game plans, the timetables, the power structures — all the elements that determine winners and losers in Sacramento and, on election day, throughout the state. Lesson One is to notice that this is a team sport: it is no coincidence that every bad bill listed at the opening of this article was authord by a Democrat. For that matter, it turns out that *every one* of the Chamber's 60 bad bills have Democrat authors. Should we be shocked? By proposing such legislation, Democrats merely adhere to their Party's basic ideology. Republican ideas reject such policies. Exceptions *can* be found, but only often enough to prove the rule.

Business owners may dislike Republicans, individually or collectively, or they may not. They may think Republicans are horribly inept — if they do, they will have lots of company, within and outside the GOP (though business owners, like the rest of us, should consider carefully the source of most major media reporting on this subject before reaching conclusions). They may consider politics a dirty game, a bore, the province of small minds and smaller characters, and, to an extent, be right. But if they use any of these excuses for continuing to operate as they do now in Sacramento, business will continue to find politics — every last unpleasant bit of it — invading their worlds at every turn. This gorgon must be faced, not hid from or fed in hopes it will leave business alone. It won't, until it is defeated. *That* is business's stake in the budget battle.

Turning to some specifics:

Taxes

The Democrat answer to the budget dilemma that four years of their profligacy has brought on is a one-note symphony of "raise taxes" on everything and everybody. They will occasionally mouth the words "spending cuts" for the media or in hopes of gulling the more guileless members of the GOP caucuses, but their spending cuts have all the heft of cotton candy — and will melt away just as quickly once the tax increases are agreed upon.

The California economy endures the ninth highest tax burden in the country. Senate Democrat Leader John Burton's reaction to that, as he recently told the *Los Angeles Times,* was that we "still lagged significantly behind other highly developed states like Massachusetts, New Jersey, and most of the progressive

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northeastern states." At last an honest man! Democrat "progress" for California is emulating Ted Kennedy's "Taxachusetts."

Burton understandably shies away from making comparisons between California and neighboring Oregon, Nevada, and Arizona. The businesses and citizens of all three of these states carry a tax burden between 20 and 40 percent *less* than that imposed on Californians. It shouldn't take qualification for MENSA membership to figure out why these states have received a steady flow of California expatriation.

This year, Democrats propose to deal with a seemingly ever-growing deficit with higher taxes — *not* surprisingly, though the scope of their tax and fee hikes might be: on cars, personal income, business income, cigarettes, alcohol, business transactions, "junk food," business property, "goods and services" providers currently exempt from taxation, Internet purchases, gasoline, the general sales tax, hunting licenses, diapers, etc., *ad nauseam.* If it breathes, moves, or takes up shelf space, tax it.

The Republican alternative is simple and direct. No ... repeat: *none* ... repeat: *zero* tax hikes. Instead, the GOP proposes a relatively painless 9 percent across-the-board spending reduction and rolling over a portion of the debt to next fiscal year. That ends the "crisis" — completely. The budget is balanced, the inconvenience is spread broadly across a wide spectrum of citizens, and the *state* is spared another growth spurt of intrusive, wasteful government.

The comparison between the two parties' approaches couldn't be starker, and it illustrates that California businesses and taxpayers are in this battle together: what is good for the average family is good for business, and *vice versa.* Senator Tom McClintock recently made the point with his usual lucidity in the *Orange County Register:* "Skyrocketing business taxes ultimately fall on families in one of three ways: as consumers through higher prices, as employees through lower wages, or as investors through lower earnings. And most investments aren't the fortunes of wealthy fat cats — they're mom and dad's retirement savings." Conversely, higher taxes on families mean less disposable income for families to spend with their local merchants and businesses.

AND HIGHER taxes, as deficit cures, are nearly always counter-productive. Government revenues shrink because they reduce private sector spending — for sales taxable purchases, for income tax-producing jobs, and for business tax-producing business growth. Pete Wilson's 1991 tax increases, passed to solve that year's budget "crisis," were followed by further economic contraction and deeper budget deficits. California's fiscal woes continued until all Wilson's tax increases either expired or were repealed. Meanwhile, the national economy (feeling the full effect of Ronald Reagan's early '80s' tax *cuts)* roared ahead, eventually dragging along the California economy.

But will the state's economy have even that eventual solace to look forward to? Putting it another way: do Democrats — even those who talk about "temporary" tax increases, intended to last only until the budget chasm closes — *ever* vote to reduce or eliminate a tax, fee, or other device that brings in money for them to spend? May I see a show of hands? No hands? Good, I'm glad to see everyone is paying attention.

Regulation

On regulation, see the Chamber bills listed earlier (and ask for the full list: call the California Chamber of Commerce, contact Sara Lee, at 916/444-6670). An unmistakable theme that Democrat policy proposals hammer home again and again is that business's legitimate interests, not to mention its beneficial roles as job-provider and major taxpayer, are matters of zero importance. If anything, running a business is seen as a kind of alien or enemy activity.

The workplace is designated a laboratory for testing liberal social theories; business owners, managers, and employees are to be forced to conform to liberals' quasi-religious moral codes; business profits are to be diverted to finance as many liberal state-run program ideas as possible; privacy for business owners and managers is to be invaded; business owners who violate any of the vast web of liberal-imposed regulations are to be treated, to an ever-growing extent, as criminals, suffering prison sentences and other criminal penalties; and the fruits of productive business activity are to be opened up as booty for as many liberal special interests and political support groups as possible. A mania appears to be loose here, a manic appetite to squeeze every last golden egg from the goose as quickly as they'll come, alongside frenzied efforts to kill off the hated goose completely. Quite a study in abnormal psychology, no doubt, but the point for business is that the game has ceased to be a game at all.

Taking politics seriously

By any measure, California business, at least California "big business," sold its soul to the Democrats last year. The portion of big business donations that went to Gray Davis rather than to Republican business-

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man Bill Simon is about 92 percent. Donation patterns for the rest of the constitutional offices are roughly the same. A quick glance at contribution patterns in legislative races shows a bit more balance, but still indicates that Democrats got 'way more than half the business donations.

TO PUT this in perspective, suppose Republicans held a two-house legislative majority, routinely introducing and passing bills emaciating the tort law regime upon which trial lawyers depend for their lavish incomes and eliminating thousands of state worker jobs, cutting the pay of thousands more, and launching a long-term initiative to privatize most, if not all, public services — *and yet,* notwithstanding any of it, trial lawyers and public employee unions not only went on covering Republican campaign costs to an almost embarrassing degree, but resolutely ignored the campaigns of pro-trial lawyer and pro-union candidates, largely or completely depriving them of donations.

But perhaps a light is breaking through. Last election cycle, 21st Century Insurance Company did something that stunned and amazed many veteran California political observers, but which was no different from what every sentient interest group, except business, does routinely: it gave significant donations — significant enough to be decisive in actual elections — to the opponents of the Party responsible for blasting it repeatedly through its actions in office. 21st Century had been singled out for pillorying by the Democrats in the wake of the Northridge earthquake. In 2002 came the last straw: a Democrat bill extending the period for filing earthquake claims, enacted years after every policy holder, knowing the date of the old deadline (many years after the quake), had had ample opportunity to file their claims. 21st Century, which evidently had followed standard business practice in lavishly donating to Democrat campaign coffers over the years, vigorously opposed the bill. Legislative Democrats, showing the usual human concern for an adversary too passive to fight back, passed the claims extension on a party line vote.

Then 21st Century tore up the usual script. Instead of continuing to bankroll its enemies, the company gave approximately $1 million to Republican Parties around the state, which, in turn, put the money, strictly according to the provisions of the current John Burton-authored campaign finance law, into GOP legislative campaigns. Under Burton's provisions, donations to political parties made shortly before an election need not be reported until the following year. 21st Century's donations were instrumental in GOP wins in three hotly-contested — and narrowly won — legislative races, one in the Senate and two in the Assembly. About a month after news of the donations came out, Democrats complained to the *Los Angeles Times,* which dutifully ran lengthy exposé-style stories full of dark-sounding intrigue, but mentioning nothing actually illegal. This was payback from the Democrats and the liberals at the *Times* to 21st Century and to the GOP for committing effective politics. A secondary purpose was served in signaling other businesses that they should think twice before attempting to participate wisely in their own behalf in the democratic process. But the matter died down quickly when no one could find anything wrong with 21st Century's actions.

Suppose 10 businesses had acted like 21st Century. How many more Democrats, facing well-funded opponents, would have lost? Bill Simon came within a few percentage points of defeating Gray Davis, despite being outspent by $35 million. What if business had spread out some of that Davis 92 percent of donations more evenly? How many of the 60 "job killer" bills would have so much as seen the light of day, with Simon's veto pen awaiting any that crossed his desk? What if GOP Controller nominee Tom McClintock, who lost by a razor-thin margin, had received even relatively small support from business? As Controller, Tom would have helped California's long-term business climate in a thousand ways, not least as a future strong, pro-free market GOP gubernatorial or U.S. Senate candidate. Suppose business, instead of giving $2 to $3 million in the 2002 primaries to "moderate" Democrats (11 of the 12 they supported lost), had sent those dollars to Republicans. How many more pro-business legislators would be in place now to help kill the "job killers"?

Business owners', and employees', stake in the budget battle is their right to make a living and freedom to run their productive lives as they, not Sacramento liberals, think they should. Perhaps more business leaders than those at 21st Century are beginning to see that. But then again, perhaps not. I just learned that a full complement of business lobbyists trooped to a mid-March Sacramento fund raiser for "moderate Democrats." The event was put together by liberal Democrat operative David Townsend. The supposedly "moderate" recipients of the cash include incumbents who voted for many of last year's Cal Chamber "job killer" bills, including the worst among them.

Will this worm turn? No telling yet.

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A most illuminating war

Liberating Iraq has told us much about where — and who — we are.

by John Kurzweil

GULF WAR II has seen the rise and fall of many — not only of people, and not only in Iraq. This stunningly illumnating conflict has shown the essential nothingness of leftism, the resilient strength of the Western idea, and, as comic relief, the fumbling confusion of liberalism, with reporters (some of them, by no means all) generously volunteering to play Falstaff to George W. Bush's Henry the Fifth. For example:

On March 28 and again March 29, as the war entered its second week, President Bush told the American people why we were fighting. The Fox News website carried the following report, which I repeat in full (excepting a few details at the end) to convey the report's overall, highly illustrative sense and flavor:

> WASHINGTON — President Bush on Saturday sought to marshall the nation's resolve to withstand more casualties, saying further sacrifice must be expected with U.S.-led troops "now fighting the most desperate units" of the Iraqi army.
>
> Despite stronger-than-expected fighting in Iraq's south and more deaths of American and British troops, Bush was steadfastly optimistic about the war's outlook. He was spending the second weekend of the invasion, like the first, at Camp David.
>
> "The fighting is fierce and we do not know its duration, yet we know the outcome of this battle," the president said in his weekly radio address. "The Iraqi regime will be disarmed and removed from power."
>
> Bush planned a video conference with his war council from the Maryland mountain retreat Saturday morning.
>
> Speaking Friday at a White House tribute to veterans groups, Bush braced the nation for more casualties as part of an administration-wide campaign to lower expectations for a quick, mostly risk-free war.
>
> He also assured Americans the war was going well, even as administration officials privately conceded that Iraqi tactics had forced changes in U.S. battlefield strategies.
>
> During the East Room appearance, and the almost word-for-word repeat of those remarks in his radio address, Bush issued a stern warning to Iraqi commanders.
>
> Hoping to rally Americans behind the war, he intensified criticism of Saddam Hussein's regime. He said the regime was murdering Iraqis who refuse to fight coalition forces, executing prisoners of war, opening fire under the guise of surrender, and hanging an Iraqi woman for waving at coalition troops ....

Now although Bush intended to lay out the issues dividing the *two* sides directly involved in the war, this report indicates the presence of a *third* element, one siding neither with Saddam nor with those seeking his overthrow. Bush's points about the two forces directly involved in the battle are not in dispute: the Iraqi regime of Saddam Hussein was murderous — sadistically so, making a point of killing helpless prisoners, civilians, women, and children, starkly defying all moral sensibility. In a word: barbarous. The opposition to barbarism throughout history has been civilization, Bush indicating that America was serving that cause in Iraq.

But this Fox News report introduces a *third* side between barbarism and civilization, a side less interested either in Saddam's evil or in the justice of ending it than in the *cost* of doing anything at all. The report briefly, but unmistakably, makes its case: the primary concern is U.S. casualties (the lead sentence). Bush's optimism is questionable given "stronger-than-ex-

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pected fighting in Iraq's south and more deaths of American and British troops." Paragraph five again warns of "more casualties" and suggests the administration's buoyant mood is either mistaken or disingenuous, repeating this second point in paragraph six. The report finally lets Bush make his point in paragraph eight, but not before implying a fourth time that the president's cool resolve and confidence hid secret doubts ("Hoping to rally Americans behind the war ..." — at a time when every poll showed 70 percent support for it).

Fielding the 'how long?' question, Bush succinctly informed the reporter that 'the question is not one of timetables, but of victory.'

Contrary to the usual conception of political and military conflicts as two-sided affairs, such third elements as this appear regularly in the middle of them: carefully eschewing alliance with either cause, assuming the role of prudent arbiter, looking to the costs involved and given to self-righteous indignation, even scornful superiority, toward the "extremists" to their "right" and to their "left" who balk at compromise. Like all serious fanatics, they transform a healthy trait, in this case, moderation — which is a pretty good joke — into a divine cause flattening all competing interests. This simplifies life and avoids or, at least puts off, unpleasant realities. In World War II, between Churchill and Hitler stood Chamberlain, assuring that civilization delayed effective opposition to barbarism until appeasement had had its day.

The three elements were also present during the Vietnam war. In his 1982 book *Why We Were in Vietnam*, Norman Podhoretz identified them: side one represented in a quote from a 1956 John Kennedy speech in which Kennedy declared Vietnam "the cornerstone of the Free World in Southeast Asia," adding that the entire region "would be threatened if the red tide of Communism overflowed into Vietnam"; side two described in a Podhoretz paraphrase of its position, calling America's role "an act of aggression against a people fighting to liberate themselves from a corrupt and repressive regime .... We were the counter-revolutionaries, we were the imperialists, we were the enemies of freedom and self-determination." This position, of course, never enjoyed wide support, just as few today agree with Columbia University Professor Nicholas De Genova's hope to see "a million Mogadishus."

But side three was also present, arguing, Podhoretz wrote, that "We had certain core interests — Western Europe, Japan, Israel — that we were, and must remain, committed to defend. But however desirable it might ideally be to undertake more than that, we lacked the power, the will, and the wisdom to carry out a more ambitious strategy with any hope of success. In this view, Vietnam represented the great cautionary argument against the 'arrogance of American power.'"

These third cause forces ("useful idiots," in Lenin's vocabulary, more usually known as "liberals") are enormously helpful to either sides One or Two when they can be activated *within the opponent's camp*, sowing doubt and undermining morale. Of course, barbarians crush them ruthlessly whenever they appear in their own ranks (Lenin exterminated most of the useful idiots, for instance, once the revolution was won, using former Czarist thugs to do it; Stalin did in the rest), while civilized people, following their principles, permit them freedom to talk and act, so liberals usually appear most prominently plaguing side One.

Liberals frame their arguments to give the impression their disagreement is only about tactics. During the opening days of the war, for instance, their voice was most distinctly heard in reporters' persistent question: how long will it last?, changing the subject from true objectives to relative costs. But the impression that they hold only *superficial* differences with those prosecuting the war, especially Bush, is just that — superficial.

THE DIFFERENCE, or disagreement, is absolute. They would have favored negotiated "diplomacy" forever, or any other tactic that insured the strategic objective never switched from avoiding dealing with Saddam to taking him on seriously. Once he is so taken on, the only thing liberals want to know is: how soon can we quit?

George Bush understands the absolute nature of this divide, as he showed at an early news conference. Fielding the "how long?" question — already appearing scant *days* into the war — he succinctly informed the reporter that "the question is not one of timetables, but of victory." Winston Churchill, addressing a joint session of Congress in December 1941 (within days of

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Pearl Harbor), answered the same question with characteristic eloquence:

> Some people may be startled or momentarily depressed when, like your president, I speak of a long and hard war. But our peoples would rather know the truth, somber though it be. And after all, when we are doing the noblest work in the world, not only defending our hearths and homes but the cause of freedom in other lands, the question of whether deliverance comes in 1942, 1943, or 1944 falls into its proper place in the grand proportions of human history. Sure I am that this day — now — we are the masters of our fate; that the task which has been set us is not above our strength; that its pains and toils are not beyond our endurance. As long as we have faith in our cause and an unconquerable will-power, salvation will not be denied us. In the words of the Psalmist, "He shall not be afraid of evil tidings; his heart is fixed, trusting in the Lord."

With victory in the Cold War, the left has lost its 'moral' home when the subject is international affairs.

No bridge can cross this chasm. The grand strategic objectives are polar opposites: one sees barbarism as the absolute evil with which no compromise can be honorable; the other, equally absolutely, sees the evil as any willingness to risk life and peace for any cause whatever. One sees life as active, the other as passive; one is concerned with reality, the other with self-delusion (for instance, it conveniently ignores such contradictions as that, in denouncing all absolute causes, it has made the cause of "life and peace" absolute; also that nothing risks *real* life and peace more surely than permitting blood-witted tyrants to proceed unopposed.)

All Bush need do now is repeat Churchill's assertions that this cause would be right even if it required *years* of fighting and that the key is "unconquerable will-power" inspired by "the Psalmist" and "trust in the Lord." The liberals would be writhing on the floor, foaming at the mouth.

The three "sides," or arguments, may be summarized as: (1) we should stand for proposition A, (2) we should stand for proposition B, which contradicts A, and (3) we should stand firm for neither, especially if doing so involves any sort of risk, and stand instead for a "principled" willingness to compromise anything — except our refusal to stand firm for either A or B.

Something vs. Nothing

Another way to summarize the three-way conflict, particularly applicable in the current war, is: (1) something (*i.e.*, Western Civilization) *vs.* (2) nothing (anti-civilization — barbarism) and (3) self-absorption, which has no room for causes larger than oneself.

For instance, consider the absolute contrast between the allies' and Saddam's ideas about proper tactics. The allies' conduct in Gulf War II adds up to history's most thorough application ever in a major conflict of the West's classic "just war" principles. Bush lavishly indulged "diplomacy" long past any possibility it would render any real results. The allies performed miracles of precise bombing to leave all but those directly involved in the Iraqi tyranny untouched as much as possible. Perhaps most amazing of all, America, in keeping with its tradition, is simply *not interested* in establishing any sort of long-term domination of post-war Iraq beyond insuring a Saddam-like threat does not recur. Countless other factors could be brought in evidence.

Although these "just war" principles go back at least to the time of Constantine, their most succinct formulation is from St. Thomas Aquinas: a just war must be undertaken on the authority of the sovereign, in a just cause, and with a rightful intention. To St. Thomas's three conditions, a fourth was later added: that the war must be waged by "proper means." These four have been refined to mean that the nation's rights have been or are imminently likely to be violated, that other means of preventing the aggression have been tried and failed, and that a proportion exists between the foreseen evils of the conflict and the hoped-for benefits of engaging in war.

These are anything but theoretical abstractions: most "anti-war" criticism (like Saddam's own propaganda) is intended precisely to prove a war unjustified by showing that one or more of these conditions has not been met: the war is unpopular (not on the authority of the sovereign), it's all about oil (no rights are violated or threatened and neither the cause nor the intention is just), it represents Bush's failed diplomacy (other means have not been tried), harping on every casualty (the cost is disproportionate), innocent civilians will be killed, in-

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jured, and lose property; the Iraqi people are not "rising up" to welcome us (our means are not "proper" and, again, the cause is not defense of rights; rather, we are violating the rights of others). Thus, the "something" — Western Civilization, as encapsulated in its "just war" principles — is acknowledged as at the center of the allies' purpose in the war by both Bush and his supporters *and* by its critics in America and abroad.

AND WHAT of Saddam? His terrorist tactics are so thoroughgoing they may be said to extend beyond merely ignoring all Western rules of war. They seem specifically designed to reject them as starkly as possible. Saddam's tactics proclaim fear against hope; a ubiquitous, homicidal violence against peace; ruthlessness against law; death against life.

One of the interesting aspects of current "anti-war" rhetoric is the complete absence, unlike in the past, of any talk of "progressive" forces under attack by "Neanderthals" or "reactionaries." One of the many salutary results of victory in the Cold War is that, the Soviet Empire being gone, the left has lost its "moral" home when the subject is international affairs. For all its obvious shortcomings, the Evil Empire (including North Vietnam), by proclaiming itself "communist," always provided moral cover for the left's anti-Americanism. As Podhoretz noted, America could be accused of opposing "people fighting to liberate themselves," of being "the enemies of freedom and self-determination," even when we opposed the absolute tyranny of North Vietnam's thugs.

But now, the anti-American left is forced to seek refuge in support of *the Islamic world!* — delicious irony! Theocracies! *No* rights for women! No civil rights at all, no free press, no social welfare, no literacy programs, no redistribution of wealth, not even a Playboy mansion or free, legal abortion for all — no *nothing* except endless talk of "God's triumph" against "unbelievers," references to "Great Satans," strict imposition of Medieval conventions, torture as a routine means of maintaining order, and a corrupt ruling elite, polluting the world with odious *oil* and as shamelessly parasitic on the peoples' necks as any oligarchs in history.

True *leftists*, as opposed to liberals, are able to bypass all that, as we have seen in the most vociferous anti-war proclamations and demonstrations around the world. Saddam and what he represents doesn't bother them at all. Why not? Because leftism has never been about "progress," or anything positive. It is merely what Marx was accused of being more than 100 years ago: a negation, bringing down the West, imposing nothing in place of something as a supreme cause and hope for mankind. In practical terms, the left's cause turns out to be barbarism. Saddam serves that, to be sure, and so he is the left's cause of the day.

But this leaves *liberals* in a pickle. Most Americans support the war because, ever more clearly as it unfolds, both patriotic and moral imperatives require its support. But liberals, devoted to compromise and absolute opposition to absolutes, see threats in straightforward devotion to patriotism and morality. They know that Bush — and the West — ultimately bases its defining convictions on faith in God, not Islam's Allah, but the God of the Bible, of the Judeo/Christian tradition. And God, like truth, is, by definition, not open to compromise. The First Commandment is simply incompatible with liberalism's core moral and intellectual relativism. That is why Churchill-like talk that has moved most Western people for millennia now makes liberals squirm, why appeals to faith, courage, self-sacrifice, honor, right and wrong, and virtue — appeals that have stirred Western, and more than Western, souls throughout history — freeze liberals' blood.

But .... liberals are even *more* directly offended by Saddam, because he makes the usual self-delusions so difficult. *Los Angeles Times* columnist Robert Sheer, for instance, recently wrote a standard liberal "moral equivalence" piece, comparing Saddam's death squad Fedayeen to American colonial militia. "How easy to forget," Sheer wrote, "that our own war for independence was largely fought by 'irregulars' condemned as terrorists by the British because they would snipe from behind scattered trees rather than fight from the tight formations that were the civilized form of warfare in those days." Gary L. Bauer of Campaign for Working Families easily collapsed this flimsy edifice, remarking that "the minutemen did not use women and children as human shields nor shoot civilians in the back. They did not hide guns in churches and torture those who disagreed with them. Sheer, like most leftists, just can't tell the difference between good and evil."

Not that this is likely to keep Sheer fretting for long. Presumably he will try again, and keep on trying until he finds some notion that clouds his and his readers' minds sufficiently to allow them to resume their sublime, relativist complacency toward the great moral and religious questions and conflicts that shape our lives and all human history. See on the chart (page 30), for instance, how the major media "reports" the war, ignoring the realities of the battlefield, and instead placing all emphasis on subjective reactions to it that tend to justify quitting. (By the way, notwithstanding my use of a Fox News report at the beginning this article, Fox

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has provided the most informative, straightforward major media coverage.):

Reporting on the war's ...	Reality	Reporting
Objective:	Victory	Timetable
Status on the battlefield:	Saddam's forces winning nowhere, and retreating almost everywhere, their tactics indicating desperation.	We (*i.e.*, reporters, not the military) miscalculated the campaign's difficulty, expecting a "quick, mostly risk-free war."
Casualties:	For the U.S., nearly none by any rational consideration of war's likely costs. For the Iraqis, losses impossible to replace indicating almost certain defeat.	Emphasize every single allied casualty, shifting the focus from war's purpose, victory, to our side's faltering willingness to persevere.

All very subjective, self-absorbed, bored with reality, liberal.

Moderation fanatics tend to become slaves to the *status quo*. The opposite of hermits, their one firm conviction in life is never to strike out on their own in any way. One sure method of terrifying a liberal is to declare him "out of the mainstream." When Alexander Solzhenitsyn, for example, entered the West's public consciousness in the mid-1970s, the initial reaction nearly everywhere was strongly positive. Vietnam had only recently been abandoned to its fate, and a residual, highly romanticized notion — cultivated to support draft dodgers and Jane Fondaesque traitors — of "dangerous intellectuals" who stood up to defy State Power remained a powerful symbol in the liberal imagination. I recall a "Marxist" professor at Cal State Humboldt which I attended at the time, who seemed sincerely concerned when news came of Solzhenitsyn's having been taken by the Soviet secret police, disappearing into the bowels of Moscow's Lubyanka prison. Soon, however, after Solzhenitsyn had been exiled to the West and began laying blame for the tyranny besetting his country not upon certain unpleasant individuals at the top but upon the communist idea *per se*, and, much worse, frankly declaring that Russia had begun to go wrong when the people had "forgotten about God" — when, that is, he had talked like a *genuinely* dangerous intellectual (dangerous to complacent conventional wisdom) — the attitude of liberal "intellectuals" shifted 180 degrees. The poor fellow, the *New York Times* informed us after he'd spoken at Harvard University, evidently belonged among "the religious Enthusiasts, sure of their relationship to the Divine will," as opposed to "men [today the *Times*, following convention, would surely say "people"] of the Enlightenment, trusting to the rationality of humankind." In liberalese, "rationality" means a closed mind against serious religious faith.

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Liberals' one fixed point is that they defy all fixed points. No other pose would allow them with clear consciences to follow every twist and turn taken by "the mainstream," conformity with the herd being their one solace in life, their substitute for religious faith. The herd is their god. Thus, their seeming inconsistencies are their own form of consistency. I just heard a promotion for a CBS program titled "Hitler: The Rise of Evil." It's permissible to talk about Hitler being "evil" because the mainstream, ever since he invaded Russia, has agreed that he is. But liberals reacted with horror when Ronald Reagan spoke of the Soviet "Evil Empire," liberal columnist Anthony Lewis declaring it the worst speech ever given by an American president. Reagan implied that "evil" is an objective reality, with recognizable traits, not whatever object of loathing *du jour* the main-

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stream chooses to go after: tobacco companies, for instance, or writing "man," permissible in the 1970s, but today a damnable sign of "sexism."

And so it is in this second Gulf War. Liberals dislike it viscerally because they sense Bush is pursuing it on solid principles — principles he seems actually to believe transcend considerations of mainstream opinion. This objection is fundamentally different from the left's opposition to the war, which is frankly embedded in hatred of the West and a desire to see it destroyed. Bill Kristol has spoken of a possible historic divide emerging from the war among liberals, as evidenced by the *New York Times*' consistent opposition in contrast to the *Washington Post's* support. Kristol could be right, but I suspect the divide here is merely between *Times* liberals, whose sensibilities happen to be more offended by Bush's sense of principle, and those at the *Post*, more horrified by Saddam's sadism and corruption. In both cases, I suspect, the essential devotion to the subjective world of self-delusion remains unshaken. Once the final course of "mainstream" opinion is clear, either the *Post* or the *Times* will fall in with it, tacitly at least. Where else have they to go?

A Veto Vetoed

As an historical matter, the war represents the first really major breakdown of the left's veto power, exercised for more than 100 years, on all major elements of the foreign policy of the West. It is less a turning point than an historical marker showing us where we now are years after having rounded the turning point, which came during the 1960s with the emergence, in Barry Goldwater's presidential campaign and the launching of Ronald Reagan's political career, of the post-war American conservative movement as a new, active force in national politics. The war, in its *denouement*, has brilliantly illuminated the nature of the conflict in which we, like all previous generations, find ourselves. For the first time since before World War I, the West has risen, *without the prior approval of the left*, in an overt, full-strength, self-assured military defense of its principles. World War I, mostly a mindless game of European power one-upmanship, parodied those principles. In World War II, the left, once Stalin gave the word, supported the allies. The left vetoed Western efforts to liberate Korea and Vietnam, but Vietnam was to prove the high point of their influence. Reagan began the new direction, restoring America's faith in its military and defying the left on missile defense and on liberating small countries like Grenada. George H. W. Bush faltered in Gulf War I, mistaking the mission as merely one of restoring the *status quo* (reflecting his own liberal sensibilities) and so leaving Saddam in place after freeing Kuwait. He also missed his chance, abandoning the Chinese in Tiananmen Square. But Gulf War II shows the West once more willing to defend itself which, if nothing else, shows the resiliency of its defining propositions, even after more than 2,000 years. CPR

Haynes

(Continued from page 19)

out any really significant spending reductions. Revenues have, after all, increased 25 percent through the wild-spending Davis years. The battle now is over whether the Democrats will find a way to ram through tax increases anyway, so as to protect their 40 percent spending growth, or whether Republicans (and those in the Assembly will have to get moving to catch up with their Senate colleagues) can reintroduce fiscal, governing sanity. The next three to six months should tell. CPR

Simon

(Continued from page 21)

being enacted. All three are based in the attitudes of those who hold tightly the reins of power in Sacramento.

First, every item in the budget, particularly those that are most wasteful, has a constituency. Many legislators find it difficult to talk about waste because the special interests relying on state spending will scream and target legislators who oppose them.

Second, many legislators succumb to the allure of spending other peoples' money, as though they thought taxpayers' checkbooks never run short. This attitude frees legislators to seek to please special interests that can assist their re-elections.

Third, many legislators simply cannot stop adding burdens to the economy. Some of these burdens serve special interests; others result from efforts to regulate out of existence every real and imagined problem life offers. All of them slow growth and destroy jobs.

Ronald Reagan said it best years ago. The problem is "not that the people are taxed too little. It's that the government spends too much." excessive spending is the root cause of California's historic budget deficit. Until policy makers recognize and confront that reality, California will continue to drown in red ink. CPR

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CRITICUS

Bowling with Bias

BY G.B. TENNYSON

Bias — oblique, obliquity, awry ... a technical term at the game of bowls [because the balls are lopsided in shape and swerve when rolled] whence come all the later uses of the word.

— *Oxford English Dictionary*

IN THE early years of this column I thought at one point to devote my attentions to the matter of talk radio as a means of alerting the readership to the alternatives to the pervasive liberal media bias. I never pursued this topic because I came to the conclusion that the enlightened readers of this publication, which is to say all of them, doubtless already knew about the conservative tilt of much talk radio and already turned to it when surfeited with the slant of the dominant media. In the following decade or so some arresting things happened in this sphere. First, talk radio became ever more popular and ever more conservative and featured ever more commentators. Second, along came the Internet with its many voices and many rooms, not a few of them also of a conservative bent. Third, along came cable news and what we may call cable talk television, also often of a non-liberal disposition. Auditors and viewers began voting with their remotes.

Not that any of this actually displaced the liberal media. The New York-Washington-Los Angeles *Times-Post-Times* axis of liberalism still held forth as did the three alphabet television networks. But our liberal practitioners did begin to sense that things were not what they had been. With the election of a Republican administration and a Republican Congress and Senate it was clear to liberals that something must be done. For years they had brushed aside talk of liberal bias in the media and had blithely ignored such phenomena as the astounding radio success of Rush Limbaugh, presumably in the belief that if they disdained mentioning such things, those things would surely go away. These voices were, after all, "ultra right wing," or "extreme right wing," whereas liberal voices weren't even liberal and certainly not "ultra" or "extreme left wing." They were "mainstream" or, at the outside, "progressive," this latter term reserved for such egregious leftists as the late Paul Wellstone, whose claim to fame now is that he is the only person whose memorial service succeeded in bringing about the election of his opponent, an unknown running,

G.B. Tennyson is actually not much of a bowler, but he likes to think he can recognize the oblique swerve of bias when he encounters it.

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given Wellstone's demise, against a former vice president.

The Wellstone debacle did bring out that deep strain of pure meanness that lies beneath the veneer of liberal compassion. Of course we had already seen that quality surface in the Florida election fiasco. By this time it had become apparent to the Liberal Establishment that a studious silence regarding the rise of conservative media voices was no longer working, so in the past year or so the left decided to confront the enemy. Almost overnight it seemed they began to bemoan what they called a conservative bias in the media and (talk about gall!) to assert that there was not, and presumably never had been, any liberal bias. In illustration of the conservative bias they cited above all talk radio but additionally cable news opinion shows, the Internet, and even the spate of books in the past few years that have attacked the left and especially the Clintons and their accomplices.

Paul Wellstone's claim to fame now is that he is the only person whose memorial service succeeded in bringing about the election of his opponent.

Clinton himself had stepped up to the plate in the waning years of his administration and complained that Rush Limbaugh had three full hours every day to set out his views while poor Clinton had nothing comparable. This from the finger-wagging holder of the bully pulpit who never hesitated (nor does he now) to speak out on every topic he chose, from imaginary black church burnings to "that woman, Ms. Lewinsky." More recently, Clinton joined the chorus of Democrats who are calling for a funding drive to enable the left to sponsor a talk radio counter-balance to Rush and his ilk. It seems to Criticus that it ought to be relatively easy to get funding from the Hollywood left and such like or for that matter from the media itself, if you get an appealing personality. The problem is, which liberal is equal to the task of taking on the King of the Talkers or indeed most of the other conservative talk-show hosts? The only suggestion I have heard is Al Franken. Of him, more later.

WHAT, HOWEVER, of the charge itself, or rather of the charges, namely the long-standing one that there is a liberal bias in the media, and the recent one that there is a conservative bias in the media? When challenged on the liberal bias charge, conservatives have cited the aforementioned major newspapers and television networks and National Public Radio and Television. Liberals claim that these outlets are simply mainstream and objective. When challenged on the conservative bias charge, liberals have cited talk radio, cable news, and the *Washington Times*. Well talk radio is dominantly conservative, but cable news is rather more mixed, though I know of one liberal who thinks Connie Chung is a lackey of the Bush administration (yea, verily). As for the valiant *Washington Times* as counterweight to the above-cited axis of liberalism, that is something devoutly to be wished, but it is also such a stretch that even most liberals have quietly dropped that name from their brief.

Despite my belief that the various biases are self-evident, I decided to give objectivity a chance, as it were, and do some field work on the matter. For my first test I thought it would be interesting to see whether all these conservative book publications that liberals lament were indeed flooding the bookshelves. I betook myself to a large Barnes & Noble in an undisclosed location and surveyed the extensive shelves devoted to current affairs and even went so far as to buy a few representative samples of books from both sides. Judging based on known sympathies of known authors and titles, I came to the conclusion that the distribution was approximately equal. There were the current crop of anti-liberal and/or conservative titles by such as Ann Coulter, Bernard Goldberg, Sean Hannity, Bill O'Reilly, and Joseph Farah, but equally there were the left's big guns, such as Michael Moore, Ariana Huffington, Gore Vidal, David Brock, and Bill Press. Along with these were titles by political androgynes and milk-and-water liberals like Bill Maher, Chris Matthews, and Susan McDougall (a ghost-written volume on why she didn't talk). This latter did call my attention to the fact that there were very few other Clinton-related titles on the shelves, which may indicate a bias in that there is a God's plenty of mostly anti-Clinton books floating around. There may also be some sort of bias in that there was an ex-

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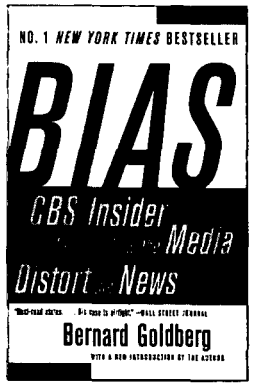
traordinary pile of titles by Hunter Thompson, however you may like to categorize the self-styled Gonzo Journalist. But overall there was a rough sort of balance.

Much can be gleaned simply from seeing how titles are displayed on the shelves. Is the book stacked spine-outwards next to another title? Or is it presented face first, that is, sideways in full frontal mode? To my surprise it seemed to me that both sides got some of this desirable exposure. Coulter and Goldberg fared best on the right, Moore (why doesn't someone buy him a razor?) and Huffington on the left. And much full-frontal of Hunter Thompson. Somebody at that Barnes & Noble must really like him. Again, however, the prominence of display seemed roughly equal. If there is a lesson to be drawn from this it is that there are now more right-wing authors than there used to be and that commerce still dictates what gets featured. If a title has become well known and controversial, the bookstore makes sure that you see that it's available.



Goldberg's charge of liberal bias so outraged star newsreaders like Dan Rather that Goldberg was driven to resign.

MY NEXT trick was to take to my couch with my sampling of books to get a sense of just how intemperate both sides might be. I began with Bernard Goldberg's *BIAS* because it is the work that brought national attention to the long-brewing controversy over liberal bias by going swiftly to number one on the *New York Times* bestseller list. What it does is provide chapter and verse on media bias mainly in network television, a field Goldberg worked in for CBS as a distinguished reporter for twenty-eight years. The book is also strongly autobiographical, detailing how his charge of liberal bias, first aired in a 1996 *Wall Street Journal* essay and expanded in the book itself, so outraged television insiders and star newsreaders like Dan Rather (known as "The Dan") that Goldberg was ostracized and effectively driven to resign. Happily, he got his pension and what one must assume were handsome royalties. A paperback edition with a new introduction by the author points out how the networks and liberal talk shows reacted to the book: they didn't talk about it and didn't invite him on. He wasn't surprised.

Described on the dust-jacket as taking up where Goldberg's *BIAS* left off, Ann Coulter's *Slander* is subtitled *Liberal Lies about the American Right,* and that is what Coulter documents in hard-hitting, entertaining, and often hyperbolic prose and with a virtually academic degree of citation: there are no fewer than 35 pages of small-print footnotes at the back documenting her every statement and quotation. She must take Lexis/Nexis to bed. And to good effect. If Goldberg names names most of the time (some sources feared reprisals) regarding the television news world, Coulter names names all of the time and offers damning details about the whole political world. Dip into *Slander* anywhere and you'll find a spicy piece of information as well as a deadly skewering of a liberal. Coulter is, after all, the person who, on "Hannity and Colmes," once blithely called the Democrat Party the "Treason Party." Alan Colmes, caught in the headlights, blanched; Coulter smiled slyly. She is a woman who shoots from the lip and makes no apology for it.

So, Goldberg and Coulter score some direct hits. What of the other side? The representative work on the left regarding media bias is a quite recent book by one Eric Alterman titled *What Liberal Media? The Truth about BIAS and the News.* (The caps for *BIAS* clearly allude to Goldberg's book.) Alterman is a columnist for *The Nation* and a website blogger for MSNBC. You can already see what's coming. Alterman is the left's answer to Goldberg and Coulter. Although he claims to "abhor the methods" of both, he jumps right into the mud wrestling arena, calling Coulter "a blond bombshell pundette" with a "vicious" mouth, "malevolent" in her hysteria, her book a "primal scream." Virtually all of Alterman's book reads as a counter-blast to Coulter and Goldberg, but especially the former, and a denial that there is such a thing as what Alterman rather tiresomely calls SCLM (*i.e.,* "so-called liberal media."). Not only are Coulter and Goldberg liars, the liberal media is actually the *conservative* media.

Criticus finds this all rather entertaining, up to a point. I especially recommend reading Coulter and

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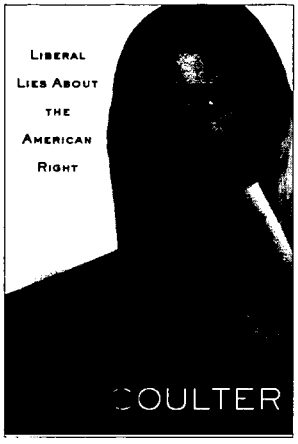
Alterman (in either order) on the subject of Al Gore and his many, let us call them, truth-challenged assertions about himself. Coulter delightedly jumps on all of them, whereas Alterman rather ponderously defends them as having been misinterpreted, often deliberately, by (what else?) the conservative media. In short, Gore never *really* said what he has been accused of saying about such things as the Internet, Love Canal, *Love Story,* and all the rest. This requires some adroit parsing of the sort that was not accorded the hapless Trent Lott, who, after all, never said a word about segregation in his tribute to Strom Thurmond. Gore, of course, or his advisers, had the sense not to go public with apologies. But the "conservative media" didn't call for his head either. They just laughed.



Dip into *Slander* anywhere and you'll find a spicy piece of information as well as a deadly skewering of a liberal.

On balance, in the debate about media bias, Criticus gives the edge to the right, but then he is biased. I do allow that Alterman has done yeoman work for the other side, but then he too is biased. He actually appears to believe in the Vast Right Wing Conspiracy theory. He's especially disgruntled about the media treatment of Clinton, but surely as a journalist he must know that when the media scent blood, they can and will go after anyone or any kind of story, even one damaging to liberals. To downplay the Lewinsky scandal and the impeachment story would have been impossible. There was certainly no media restraint on, say, Watergate. So on balance the Liberal Media still seems to be the operative term.

Just to reassure himself and Constant Readers, Criticus decided to pursue his investigation of the (SC)LM phenomenon a bit further, because the point of the liberal media charge resides not solely in the celebrated public issues about such things as Gore's veracity or Bush's intellect but rather more in the subtler sphere of the general disposition of the media on more or less everything. To give this matter a look-in, I chose at random a single day's issue of the *Los Angeles Times* for some Critical scrutiny. The day was Friday, 14 March 2003. Here's what I found that seems to me, a regular reader of the *Times,* to be representative.

On the front page above the fold were four stories and a large photo. The main story was on the likely delay by the U.S. in seeking a further vote on Iraq. Let's call that neutral. The next one was on a classified State Department report to the effect that ousting Hussein would not necessarily spread democracy in the Middle East. It was headlined "Democracy Domino Theory 'Not Credible'" and carried a subhead reading "A State Department report disputes Bush's claim that ousting Hussein will spur reforms is the Mideast." I call that liberal.

Immediately adjacent to the secret memo story ran one headlined "Senate OKs Bill to Curb Abortions," which sounds fairly sweeping. It was subheaded "Republican-backed measure would outlaw a midterm procedure." That "midterm procedure," gentle readers, is what non-liberals call "partial birth abortion." The first person mentioned by name and quoted in the article was Kate Michelman of NARAL Pro-Choice America, the new name of what was formerly the National Abortion and Reproductive Rights League. That's another L-word story. The "Column One" feature story on the left was about a biologist who has been accused of being a tool of developers in arranging land swaps to help developers build in endangered species areas. You know, gnat catchers. A lengthy story and one that did, in its depth, present both sides but began by saying "Dennis Murphy so pleased Riverside County developers last year, they gave him a brand-new Audi convertible with a big bow on it." Another L-word story.

Finally, the large sepia-colored photo of a Naval officer all wrapped up in protective gear while trying to hold down a tent "in Kuwait, where fierce sandstorms are a reminder to U.S. and British troops that weather could be a daunting foe in any attack on Iraq." A fact no doubt, but one not calculated to encourage the timorous or raise the spirits of the military. I rank the four stories and the pictures as four liberal to one neutral. And that's only above the fold. The rest of the front section shows approximately the same ratio.

Onward, rather more expeditiously, to the other sections of the paper. Section two, the "California" sec-

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tion, is mostly about state and local disasters and catastrophes of one sort or another, not least the numerous stories of various miseries engendered by the state budget crisis, usually real or threatened reductions in funds for schools.

THE INADVERTENT best of these is one turning on a state assembly debate over what to call the state's bottom-ranking schools. The Democrats passed a bill to change the term for such schools from "low-performing" to "high priority," which opponents likened to calling the "cellar-dwelling" Chicago Cubs "world champions." The author of the bill, a Democrat from Norwalk, defended the change because "words hurt," and therefore the Assembly should be a body that "encourages children, not a body that cripples children — excuse me, disables children." That just about qualifies the story as a C-word story, albeit by accident. Later in the same section, however, there is a fulsome obituary on the one-time communist and Stalin Peace Prize author Howard Fast. Of course whatever else is in the California section, the editorial and op-ed pages would gain the support of Alterman and probably for that matter Howard Fast. They alone make the section indisputably liberal. Only the Ramirez cartoon is clearly conservative, and it remains a mystery why he was ever allowed to succeed the knee-jerk liberal Conrad as the resident cartoonist. Needless to say, the Letters to the Editor columns regularly howl with rage at Ramirez

I pass over the "Business" and "Sports" sections with their accounts of commercial and athletic wrongdoings and misdemeanors because the biases here require more subtle analysis to unravel and are for the most part beneath Critical contempt. This brings us to "Calendar," which on Friday has two interminable parts, admittedly much of it given over to garish full-page ads for films. Space being what it is, I shall race through this section at high speed. There's a story about the differing views on war on local radio stations, the right represented by KFI and KABC, the left by KPFK, the Pacifica affiliate. The author strives to be even-handed but fails to give any idea of the relative size of the audience of these stations, though the two conservative stations outdraw the left-wing one by huge margins. Of course the article features a photo only of KPFK's Amy Goodman, noting that she had been arrested in a protest.

Also in "Calendar," there is a gushing Al Martinez column about the joys of a concert he attended that was staged by "peace-loving" folk singers. He buys one of their songbooks but does admit that some stuff in it made "even a guy like me uncomfortable." The song that made him "uncomfortable" has some lyrics that run "The flag is just a rag / Just a worn-out, tired, dirty, blood-soaked rag." Still, Martinez loved the concert. Later in the section, Howard Rosenberg weighs in, close to sensibly but with many a jab at the right, by bemoaning the fact that celebrities have been getting so much publicity for their anti-war views and the culprits are — the media! Of course he is part of the media and is giving them yet more coverage. Who's feeding off whom?

Finally there is a fawning review of a tendentious, non-fiction book by the black detective-story writer Walter Mosley, a book that evidently takes something of the we-brought-it-on-ourselves approach to September 11 and deplores America's handling of the issue of terrorism and the rush to war. The reviewer calls this work "progressive."

You get the picture. The SCLM, as every schoolboy knows, is still the LM.

Again, to be fair, about a week after the *Times* issue I examined, the "Calendar" section ran a piece by David Shaw about an interview over lunch with Eric Alterman, in which, to Shaw's apparent surprise, Alterman comes across as mean-spirited, biased, and decidedly close-minded. Rather like his book.

SO AT last I looked into Al Franken's 1996 book *Rush Limbaugh is a Big Fat Idiot* to see whether we had here the necessary liberal alternative to Rush and his fellow talkers. Alas, I think not. Franken is lively, fast-paced, and not infrequently funny. But it is fraternity pranks humor, the literary equivalent of throwing custard pies. Franken thinks he is a master of irony when he is more a master of slapstick. If he were in a stage farce he'd be the one who dropped his pants. To be sure Rush and company are not exactly subtle, but calling feminists Feminazis is considerably subtler than making exaggerated fun of someone who is overweight. (Rush, by the way, has long since gone on a successful slimming diet.) Franken says he is a liberal, but he certainly put political correctness aside when he decided to make fat his focus. As a joke, his entire index is of references to fat. Of course the book came out seven years ago, so perhaps the fat-is-beautiful-brigade has by now sat upon him and exacted a promise to cut the weight jokes. And for the next edition, Franken may also want to cut his smarmy laudation of Clinton as the greatest president of the twentieth century. That one serious piece now reads like one of the comic highlights of the book. CPR

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